

UNITED STATES
CODE
ANNOTATED

Title 26

Internal Revenue
Code of 1939

As Amended

**TITLES OF
UNITED STATES CODE
AND
UNITED STATES CODE ANNOTATED**

- | | |
|---|--|
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| 2. The Congress. | 30. Mineral Lands and Mining. |
| 3. The President. | 31. Money and Finance. |
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| 28. Judiciary and Judicial Procedure. | |

UNITED STATES CODE ANNOTATED

TITLE 26 Internal Revenue Code of 1939

As Amended

Kept to Date by Cumulative Annual Pocket Parts

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FOREWORD

This volume contains the complete text of the Internal Revenue Code of 1939, including 1955 amendments through the end of the First Session of the 84th Congress.

The singular nature of the taxation field requires preservation of the 1939 Code despite the enactment of the Internal Revenue Code of 1954. Congress, in recognition of this fact, has enacted a number of retrospective amendments to the 1939 Code after the 1954 revision date. Not only are such amendments expected to continue but it is anticipated that cases will arise under various provisions of the 1939 Code for some time to come.

Internal Revenue Acts

Special volumes of Title 26 preserve and make conveniently available the full original text of all Internal Revenue Acts enacted by the Congress since the adoption of the United States Code, beginning with the Revenue Act of 1924.

These reference volumes are indispensable in resolving questions arising under such earlier laws.

Tables

Valuable official Tables are set out in this volume as follows:

Table I lists the sections of the 1939 Code and indicates the sections of the 1954 Code that cover the subject matter contained in the earlier provisions.

Table II lists the sections of the 1954 Code and shows the sections of the 1939 Code from which they are derived.

Federal Tax Regulations

The administrative regulations implementing the Internal Revenue Code, 26 U.S.C.A., are published and supplemented in the United States Code Congressional and Administrative News. These regular volumes preserve, in permanent form, the regulations governing federal taxation in effect at the start of each year.

FOREWORD

The regulations are kept to date on a current basis throughout the year by the publication of the amendatory and supplementary regulations in the current Pamphlets of the United States Code Congressional and Administrative News.

Historical Notes

Included in this volume are amendment notes, legislative history references, and many other aids that are necessary for a complete understanding of the basic law.

Tax Court Rules

For convenient and useful reference the Rules of Practice of the Tax Court of the United States, as revised to date, are set out following section 7453 of Title 26, Internal Revenue Code of 1954.

Supplementary Service

This volume will be kept up-to-date through your United States Code Annotated supplementary service consisting of Pamphlets and Cumulative Annual Pocket Parts.

THE PUBLISHERS

October 1, 1955

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TABLE I

This Table lists the sections of the Internal Revenue Code of 1939, as amended, 26 U.S.C.A., and indicates the sections of the Internal Revenue Code of 1954 which cover similar subject matter.

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1 -----	Omitted	22(c) -----	471
2 -----	7806(a)	22(d) (1)-(5) -----	472
3 -----	Omitted	22(d) (6) -----	1321, 6155(a)
4 -----	Omitted	22(e) -----	301(a)
11 -----	1	22(f) -----	1001
12(a) -----	Omitted	22(g) -----	861, 862, 863, 864
12(b) (1), (2) -----	Omitted	22(h) -----	Chapter 1, Sub- chapter G, Part III
12(b) (3) -----	1	22(i) -----	Omitted
12(c) -----	1	22(j) -----	76
12(d) -----	2	22(k) -----	71
12(e) -----	Omitted	22(l) -----	691
12(f) -----	1	22(m) -----	73, 6201(c)
12(g) -----	Omitted	22(n) -----	62
13(a) -----	Omitted	22(o) -----	75
13(b) -----	11	23 -----	161, 211
13(c)-(f) -----	Omitted	23(a) (1) (A) -----	162
14 -----	Omitted	23(a) (1) (B) -----	162
15(a), (b) -----	11	23(a) (1) (C) -----	263
15(c) -----	1551	23(a) (2) -----	212
21 -----	63	23(b) -----	163, 265
22(a) -----	61	23(c) (1) -----	164
22(b) (1) -----	101	23(c) (2) -----	Omitted
22(b) (2) (A) -----	72	23(c) (3) -----	164
22(b) (2) (B) -----	72, 403	23(d) -----	164
22(b) (2) (C) -----	72	23(e) -----	165
22(b) (3) -----	102	23(f) -----	165
22(b) (4) -----	103	23(g) -----	165
22(b) (5) -----	104	23(h) -----	165
22(b) (6) -----	107	23(i) -----	165
22(b) (7) -----	894	23(j) -----	1091
22(b) (8) -----	115, 526, 892, 893, 911, 912, 933, 943	23(k) (1) -----	166, 593
22(h) (9) -----	108	23(k) (2) -----	165(g) (1), 166(e), 582
22(b) (10) -----	108	23(k) (3) -----	165(g) (2)
22(b) (11) -----	109	23(k) (4) -----	166
22(b) (12) -----	111	23(k) (5) -----	166
22(b) (13) -----	112	23(k) (6) -----	271, 168
22(b) (14) -----	113	23(l) -----	167
22(b) (15) -----	621	23(m) -----	611
22(b) (16) -----	114		

TABLE I

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23(n) -----	167
23(o) -----	170
23(p) -----	404
23(q) -----	170
23(r) -----	591
23(s) -----	172
23(t) -----	168, 169
23(u) -----	215
23(v) -----	171
23(w) -----	601
23(x) -----	213
23(y) -----	Omitted
23(z) -----	216
23(aa) (1) -----	141
23(aa) (2) -----	36
23(aa) (3) -----	144
23(aa) (4) -----	4, 142
23(aa) (5) -----	142
23(aa) (6) -----	143
23(aa) (7) -----	144
23(bb) -----	173
23(cc) -----	616
23(dd) -----	592
23(ee) -----	1202
23(ff) -----	615
24(a) -----	261
24(a) (1) -----	262
24(a) (2), (3) -----	263
24(a) (4) -----	264
24(a) (5) -----	265
24(a) (6) -----	264
24(a) (7) -----	266
24(b) -----	267
24(c) -----	267
24(d) -----	273
24(e) -----	1451
24(f) -----	268
25(a) -----	35
25(b) (1) -----	151
25(b) (2) -----	153
25(b) (3) -----	152
26 -----	241
26(a) -----	242
26(b) -----	246
26(b) (1) -----	243
26(b) (2) -----	244
26(b) (3) -----	245
26(c) -----	545, 556
26(d) -----	535, 545, 601
26(e) -----	Omitted

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
26(f) -----	561, 562, 564
26(g) -----	565
26(h) -----	247
26(i) -----	922
27(a) -----	561
27(b) -----	535, 562
27(c)-(i) -----	562, 564
28 -----	565
31 -----	33
32 -----	32
33 -----	6401
34 -----	Omitted
35 -----	31
41 -----	441, 446
42(a) -----	451
42(b)-(d) -----	454
43 -----	461
44 -----	453, 7101
45 -----	482
46 -----	442
47 -----	443, 6011(a)
48 -----	441, 7701
51 -----	6001, 6011(a)
51(a) -----	6001, 6012(a), 6065(b)
51(b) -----	6012(b) (1), 6013(a), 6014(b)
51(c) -----	6012(b)
51(d) -----	6064
51(e) -----	Omitted
51(f) -----	6014(a) and (b), 6151(a), (b), 6155(a)
51(g) -----	6012(b), 6013(b), 6059
52 -----	6012(a), (b), 6062
53 -----	6072, 6081, 6091
54(a)-(b) -----	6001
54(c)-(e) -----	Omitted
54(f) -----	6033(a), 6065(b)
55 -----	6103, 7213(a)
56(a) -----	6151(a)
56(b) -----	6152, 6601(c) (2)
56(c) -----	6161(a), 6162(a), 6165, 7101
56(d)-(f) -----	Omitted
56(g) -----	6313
56(h) -----	Omitted
56(i) -----	6151(b)
56(j) -----	Omitted

1939 CODE TO 1954 CODE

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
57 -----	Omitted	112(b) (9) -----	373
58 -----	6012(b), 6015, 6064, 6065, 6073(a), (c), 6081(a), 6091(b), 6103, 6161(a)	112(b) (10) -----	371
59(a)-(c) -----	6153	112(b) (11) -----	355
59(d) -----	6201(b), 6315, 6601(g)	112(c) -----	351, 356, 371, 1031
60 -----	6015(g), 6073(b), (d), (e); 6091 (b), 6153(b), (d), (e)	112(d) -----	361, 371
61 -----	Omitted	112(e) -----	351, 356, 361, 371, 1031
62 -----	7805	112(f) -----	1033
63 -----	6108	112(g) -----	368
64 -----	7701	112(h) -----	368
101(1)-(11), (13)- (19) -----	501	112(i) -----	367
101(12) -----	521, 522	112(j) -----	Omitted
101 -----	502	112(k) -----	357, 371
102(a) -----	531, 532	112(l) -----	371
102(b), (c) -----	533	112(m) -----	1071
102(d) -----	535	112(n) -----	1034
102(e) -----	541	113(a) -----	1012
102(f) -----	536	113(a) (1) -----	1013
103 -----	891	113(a) (2) -----	1015
104(a) -----	581	113(a) (3) -----	1015
104(b) -----	11	113(a) (4) -----	1015
105 -----	632	113(a) (5) -----	1014
106 -----	1347	113(a) (6) -----	358, 1031
107(a) -----	1301	113(a) (7) -----	362
107(b) -----	1302	113(a) (8) -----	362
107(c) -----	1304(a)	113(a) (9) -----	1033
107(d) -----	1303	113(a) (10) -----	1091
107(e) -----	1304(b)	113(a) (11) -----	1051
108 -----	21	113(a) (12) -----	1052
109 -----	921	113(a) (13) -----	723, 732
110 -----	594	113(a) (14) -----	1053
111 -----	1001	113(a) (15) -----	334
112(a) -----	1002	113(a) (16) -----	1052
112(b) (1) -----	1031	113(a) (17) -----	1082
112(b) (2) -----	1036	113(a) (18) -----	334
112(b) (3) -----	354, 355	113(a) (19) -----	307
112(b) (4) -----	361	113(a) (20) -----	373
112(b) (5) -----	351	113(a) (21) -----	373
112(b) (6) -----	332	113(a) (22) -----	372
112(b) (6) (D) -----	7101	113(a) (23) -----	358
112(b) (7) -----	333	113(b) -----	1011
112(b) (8) -----	1081	113(b) (1) -----	1016
		113(b) (2) -----	1016
		113(b) (3) -----	1017
		113(b) (4) -----	1018
		113(c) -----	1019
		113(d) -----	1020
		114(a) -----	167(f)
		114(b) (1) -----	612
		114(b) (2) -----	Omitted

TABLE I

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
114(b) (3) -----	613(b) (3)	119(c), (d) -----	862
114(b) (4) -----	613(b) (4)	119(e) -----	861, 862, 863
115(a) -----	301, 316	119(f) -----	864
115(b) -----	301, 316	120 -----	170
115(c) -----	302, 312, 331, 342	121 -----	583
115(d) -----	301	122 -----	172
115(e) -----	301	123 -----	77
115(f) -----	305	124 -----	Omitted
115(g) (1) -----	302	124A -----	168
115(g) (2) -----	304	124B -----	169
115(g) (3) -----	303	125 -----	171
115(h) -----	312	126 -----	691
115(i) -----	302, 346	127(a), (b) -----	Omitted
115(j) -----	301	127(c) (1) -----	1331
115(k) -----	Omitted	127(c) (2) -----	1332
115(l) -----	312	127(c) (3) -----	1333
115(m) -----	312	127(c) (4) -----	1334
116(a) -----	911	127(c) (5) -----	1335
116(b) -----	Omitted	127(d) -----	1336
116(c) -----	892	127(e) -----	1337
116(d) -----	115	127(f) -----	1337
116(e) -----	115	128 -----	1346
116(f) -----	943	129 -----	269
116(g) -----	526	130 -----	270
116(h) -----	893	130A -----	421
116(i) -----	121(a) (17)	131(a) -----	901
116(j) -----	912	131(b) -----	904
116(k) -----	912	131(c) -----	905, 6155(a), 7101
116(l) -----	933	131(d) -----	905
117(a) -----	1221, 1222	131(e) -----	905
117(b) -----	1202	131(f) -----	902
117(c) -----	1201	131(g) -----	901(c)
117(d) -----	1211	131(h) -----	903
117(e) (1) -----	1212	131(i) -----	905
117(e) (2) -----	Omitted	141 -----	1501, 1502, 1503, 1504, 1505, 6071, 6081(a), 6091(b) (2), 6503(a) (2)
117(f) -----	1232	142 -----	6012(a), (b), 6065(a)
117(g) (1) -----	1233	143(a) -----	1451
117(g) (2) -----	1234	143(b) -----	1441
117(g) (3) -----	1238	143(c) -----	1461, 6011(a), 6072(a), 6091(b), 6151(a)
117(h) -----	1223	143(d) -----	1462
117(i) -----	582	143(e) -----	1463
117(j) -----	1231	143(f) -----	1464, 6414
117(k) -----	631	143(g) -----	1461
117(l) -----	1233	143(h) -----	1443, 6151
117(m) -----	341		
117(n) -----	1236		
117(o) -----	1239		
117(p) -----	1240		
118 -----	1091		
119(a), (b) -----	861		

1939 CODE TO 1954 CODE

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
144 -----	1442, 6151(a)	170 -----	642, 584
145 -----	7201, 7202, 7203, 7343	171 -----	682
146 -----	443, 6155(a), 6601(a), 6658, 6851, 7101	172 -----	642
147 -----	6041(b), (c), 6071, 6081(a), 6091(a)	181 -----	701
148 -----	6042, 6043, 6044, 6065(a), 6071, 6081(a), 6091(a)	182 -----	702
149 -----	6045, 6065(a), 6071, 6081(a), 6091(a)	183(a), (b) -----	702, 703
150 -----	6071, 6081(a), 6091(a), 7001(a), 7231	183(c) -----	702
151 -----	Omitted	183(d) -----	703(a)
153(a) -----	6033(b), 6071, 6081(a), 6091(a)	184 -----	702
153(b) -----	6034, 6071, 6081(b), 6091(a)	186 -----	702
153(c) -----	6104	187 -----	6031, 6063, 6065(a)
153(d) -----	7201, 7203	188 -----	706
154 -----	602	189 -----	702, 703
161 -----	641	190 -----	Omitted
162(a) -----	642(c)	191 -----	704
162(b) -----	651, 652, 661, 662	201(a) (1) -----	802
162(c) -----	661	201(a) (2), (3) -----	807
162(d) -----	643, 663	201(b) -----	801
162(e) -----	642	201(c) (1) -----	803(a)
162(f) -----	642	201(c) (2) -----	803(b)
162(g) -----	681	201(c) (3) -----	803(c)
163(a) (1) -----	642	201(c) (4) -----	803(d)
163(a) (2) -----	642	201(c) (5) -----	803(e)
163(b) -----	642	201(c) (6) -----	803(f)
163(c) -----	642(a), (1)	201(c) (7) -----	803(g)
164 -----	652, 662	201(d) -----	803(h)
165(a) -----	401, 501(a)	201(e) -----	803(i)
165(b) -----	402	201(f) -----	803(j)
165(c) -----	402	201(g) -----	Omitted
165(d) -----	402	202(a) -----	Omitted
166 -----	676	202(b) -----	804(a)
167 -----	677	202(c) -----	806
168 -----	642	203 -----	Omitted
169(a)-(c) -----	584, 6065	203A -----	805
169(d) (1)-(3) -----	584	204(a) (1) -----	831(a)
169(d) (4) -----	584	204(a) (2) -----	831(b), 832
169(e) -----	584	204(a) (3) -----	831(b)
169(f) -----	6032, 6065(a)	204(b) (1) -----	832(b) (1)
169(g) -----	584	204(b) (2) -----	832(a)
		204(b) (3) -----	832(b) (2)
		204(b) (4) -----	832(b) (3)
		204(b) (5) -----	832(b) (4)
		204(b) (6) -----	832(b) (5)
		204(b) (7) -----	832(b) (6)
		204(c) -----	832(c)
		204(d) -----	832(d)
		204(e) -----	832(e)
		204(f) -----	832(c) (12)
		205 -----	841
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		207(a) (1), (2) -----	821(a)

TABLE I

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207(a) (3) -----	821(b)	271 -----	6211, 6653(c) (1)
207(a) (4) -----	821(c)	272(a) -----	6212(a), (b) (2), 6213(a)
207(a) (5) -----	822(e)	272(b) -----	6155(a), 6215(a)
207(a) (6) -----	821(d)	272(c) -----	6155(a), 6213(c)
207(b) (1) -----	822(a), (b)	272(d) -----	6213(d)
207(b) (2) -----	823(1)	272(e) -----	6214(a)
207(b) (3) -----	823(2)	272(f) -----	6212(c), 6213(b) (1)
207(b) (4) -----	822(a)	272(g) -----	6214(b)
207(b) (4) (A)-----		272(h) -----	6214(c)
(F) -----	822(c)	272(i) -----	6152(c), 6601(c) (2)
207(c) -----	822(d) (1)	272(j) -----	6161(b), 6165, 7101
207(d) -----	822(d) (2)	272(k) -----	6212(b)
207(e) -----	822(e)	273(a)-(i), (k) -----	6155, 6861, 6863(a), (b), 7101
207(f) -----	822(d) (3)	273(j) -----	6404(b)
207(g) -----	Omitted	274 -----	6036, 6155(a), 6161(c), 6503 (b), 6871, 6872, 6873
208 -----	Omitted	275 -----	6501
211 -----	871	276 -----	6501(c), 6502(a)
212 -----	872	277 -----	6503(a)
213(a)-(c) -----	873	291 -----	6651(a), 6659
213(d) -----	142(b) (1)	292 -----	6155(a), 6601
214 -----	873	293 -----	6653(a), (b), 6659
215 -----	874, 6011(a), 6065(b)	294 -----	6601, 6651(c), 6654(a)
216 -----	874	295 -----	6601
217 -----	6011(a), 6012(a), 6072(c)	296 -----	6601
218(a) -----	6151(a)	297 -----	6601
219 -----	875	298 -----	6601
220 -----	876	299 -----	6658
221 -----	877	311 -----	6901
231(a) -----	881	312 -----	6903
231(b) -----	882(a)	313 -----	Omitted
231(c) -----	882(b)	321 -----	6403
231(d) -----	883	322(a) (1)-(3) -----	6401, 6402
232(a) -----	882	322(a) (4) -----	31
232(b) -----	882	322(b) (1) -----	6511
233 -----	882, 6065(a)	322(b) (2) -----	6511
234 -----	882	322(b) (3) -----	6511
235(a) -----	882, 6011(a), 6072(c)	322(b) (4) -----	6151(c), 6513(a), 6611(d)
235(b) -----	6012(a)	322(b) (5) -----	6511(d)
236(a) -----	6151(a)	322(b) (6) -----	6511(d)
236(b) -----	884(1)	322(c) -----	6512(a)
237 -----	884(3)		
238 -----	884(4)		
251 -----	931, 6011(a)		
252 -----	932		
261 -----	11		
262 -----	941		
263 -----	942		
265 -----	943		

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
322(d) -----	6512(b)
322(e) -----	6151(e), 6513(b), 6611(d)
322(f) -----	Omitted
322(g) -----	6511(d)
331 -----	552
332 -----	553
333 -----	554
334 -----	555
335 -----	556
336(a), (b), (c) ---	556
336(d) -----	557
337 -----	551
338 -----	6035(a)
339 -----	6035(b)
340 -----	7201, 7203
361 -----	851
362 -----	852, 855
371 -----	1081
372 -----	1082
373 -----	1083
391 -----	Omitted
392 -----	Omitted
393 -----	Omitted
394(a)-(c) -----	Omitted
394(d) -----	312
394(e), (f) -----	Omitted
395 -----	Omitted
396 -----	Omitted
400 -----	3
401 -----	4
402 -----	4
403 -----	36
404 -----	4
421(a), (b) -----	501, 511
421(c), (d) -----	512
422(a) -----	512
422(b) -----	513
423 -----	514
424 -----	515
480 -----	1401
481 -----	1402
482 -----	1403, 6017
500 -----	541
501 -----	542
502 -----	543
503 -----	544
504(a), (b) -----	545
504(c) -----	562, 563
504(d) -----	Omitted
501(e) -----	545

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
505(a)-(c) -----	545
505(d) -----	Omitted
505(e) -----	546
506(a)-(h) -----	547
506(i) -----	Omitted
506(j) -----	Omitted
507(a) -----	Omitted
507(b) -----	543
508 -----	Omitted
509 -----	531
510 -----	Chapter 1, Subchapter G, Part III
511 -----	6103, 7213(a)
650 -----	1471
651 -----	1471
722(g) -----	6105
800 -----	2001, 2101
801 -----	Omitted
802 -----	Omitted
810 -----	2001(a), 2011(a), 2011(b)
811 -----	2031(a)
811(a) -----	2033
811(b) -----	2034
811(c) -----	2035, 2036, 2037
811(d) (1) -----	2038(a) (1)
811(d) (2) -----	2038(a) (2)
811(d) (3) -----	2038(b)
811(d) (4) -----	Omitted
811(e) -----	2040
811(f) -----	2041
811(g) -----	2042
811(h) -----	2044
811(i) -----	2043(a)
811(j) -----	2032
811(k) -----	2031(b)
811(l) -----	2035
811(m) -----	Omitted
812 -----	2051
812(a) -----	Omitted
812(b) -----	2043(b), 2053, 2054
812(c) -----	2013
812(d) -----	2055
812(e) -----	2056
813(a) (1) -----	Omitted
813(a) (2) -----	2012
813(b) -----	2011
813(c) -----	2014

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
820 -----	6036, 6091(a)	872(b) -----	6861(b)
821(a) -----	6018, 6065(a)	872(c) -----	6861(c)
821(b) -----	6071, 6075(a), 6081(a)	872(d) -----	6861(d)
821(c) -----	6091(b)	872(e) -----	6861(e)
821(d) -----	6001	872(f) -----	6863(a), (b) (2), 7101
821(e) -----	Omitted	872(g) -----	6155(a), 6863(b) (1)
822(a) (1) -----	6151(a)	872(h) -----	6863(a), (b) (2)
822(a) (2) -----	6161(a) (2), 6165, 6503(d), 7101	872(i) -----	6155(a), 6861(f)
822(b) -----	2002	872(j) -----	6861(g)
823 -----	6314(b)	873 -----	6404(b)
824 -----	Omitted	874(a) -----	6501(a)
825 -----	2204	874(b) (1) -----	6501(c) (1), 6501 (c) (3)
826(a) -----	7404	874(b) (2) -----	6502(a)
826(b) -----	2205	874(b) (3) -----	2016, 6071, 6081, 6091, 6155
826(c) -----	2206	875 -----	6503(a) (1)
826(d) -----	2207	876 -----	Omitted
827(a) -----	6324(a) (1), 6325(a) (1)	890 -----	6601(a), 6601(b), 6601(f) (1)
827(b) -----	6324(a) (2)	891 -----	6155(a), 6601(a), 6601(d), 6601 (f) (1)
827(c) -----	6324(a) (3)	892 -----	6601(a), 6601(c) (3)
828 -----	Omitted	893 -----	6601(a), (c), (f)
840 -----	Omitted	894(a) -----	6651(n), 6653(a)
841 -----	Omitted	894(b) -----	7201, 7202, 7203, 7207, 7269, 7343
850 -----	2202	900(a) -----	6901(a), (b)
851 -----	Omitted	900(b) -----	6901(c)
860 -----	2101	900(c) -----	6901(f)
861 -----	2102, 2103, 2106	900(d) -----	6904
862 -----	2104	900(e) -----	6901(h)
863 -----	2105	901(a) -----	6903(a)
864(a) -----	6018, 6065(a)	901(b) -----	6903(a)
864(b) -----	6071, 6075(a), 6081(a)	901(c) -----	6903(b)
864(c) -----	6091(b)	901(d) -----	6212(b)
865 -----	Omitted	910 -----	6511
870 -----	6211(a), 6653(c) (1)	911 -----	6512(a)
871(a) -----	6212(a), 6213(a)	912 -----	6512(b)
871(b) -----	6155(a), 6215(a)	913 -----	Omitted
871(c) -----	6155(a), 6213(c)	920 -----	Omitted
871(d) -----	6213(d)	921 -----	Omitted
871(e) -----	6214(a)	925 -----	6163(a), 6601(a), (b)
871(f) -----	6212(c), 6213(b)	926 -----	6163(a), 7101
871(g) -----	6214(c)	927 -----	2015
871(h) -----	6161(b) (2), 6165, 6503(d), 7101		
871(i) -----	6155, 6653(b), 6659(a)		
872(a) -----	6155(a), 6861(a)		

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
930(a) -----	2203
930(b) -----	Omitted
930(c) -----	Omitted
930(d) -----	Omitted
931 -----	Omitted
935 -----	2001, 2052, 2101
936(a) -----	Omitted
936(b) -----	2012
936(c) -----	2014
937 -----	6018(a), 7203
938 -----	6103
939 -----	2201
1000(a) -----	2501
1000(b) -----	2511(a)
1000(c) -----	2514
1000(d) -----	Omitted
1000(e) -----	Omitted
1000(f) -----	2513
1000(g) -----	Omitted
1001(a) -----	2502(a)
1001(b) -----	2502(c)
1001(c) -----	Omitted
1002 -----	2512(b)
1003 -----	2503
1004(a) (1) -----	2521
1004(a) (2) -----	2522
1004(a) (3) -----	2523
1004(b) -----	2522
1004(c) -----	2524
1005 -----	2512(a)
1006(a) -----	6019(a), 6065(a)
1006(b) -----	6075(b), 6091(b) (1)
1007 -----	6001
1008(a) -----	2502(d), 6151(a)
1008(b) -----	6161(a) (1)
1008(c) -----	Omitted
1008(d) -----	6313
1008(e) -----	6314(a)
1009 -----	6324(b), 6325(a) (1)
1010 -----	Omitted
1011 -----	6211(a), 6653(c) (1)
1012(a) -----	6212(a), 6213(a)
1012(b) -----	6155(a), 6215(a)
1012(c) -----	6155(a), 6213(c)
1012(d) -----	6213(d)
1012(e) -----	6214(a)
1012(f) -----	6212(c), 6213(b)
1012(g) -----	6214(b)

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1012(h) -----	6214(c)
1012(i) -----	6161(b) (1), 6165, 7101
1012(j) -----	6212(b)
1013(a) -----	6155(a), 6861(a)
1013(b) -----	6861(b)
1013(c) -----	6861(c)
1013(d) -----	6861(d)
1013(e) -----	6861(e)
1013(f) -----	6863(a), 6863(b) (2), 7101
1013(g) -----	6155(a), 6863(b) (1)
1013(h) -----	6863(a), (b) (2)
1013(i) -----	6155(a), 6861(f)
1013(j) -----	6861(g)
1014 -----	6404(b)
1015(a) -----	6871
1015(b) -----	6155(a), 6161(c), 6503(b), 6873(a)
1016 -----	6501, 6502(a)
1017 -----	6503(a) (1)
1018 -----	Omitted
1019 -----	6653, 6659(b)
1020 -----	6601(a), (f) (1)
1021 -----	6155(a), 6601(a), (d), (f) (1)
1022 -----	6601(a), (c) (3)
1023 -----	6601(a), 6601(c) (1), 6601(f) (1)
1024(a) -----	7201, 7203
1024(b) -----	7201
1025(a) -----	6901(a), (b)
1025(b) -----	6901(c)
1025(c) -----	6901(e)
1025(d) -----	6901(f)
1025(e) -----	6904, 7421(b)
1025(f) -----	6901(h)
1025(g) -----	6901(g)
1026(a) -----	6903(a)
1026(b) -----	6903(a)
1026(c) -----	6903(b)
1027(a) -----	6402(a)
1027(b) -----	6511(a), (b)
1027(c) -----	6512(a)
1027(d) -----	6512(b)
1028 -----	Omitted
1029 -----	7805(a)
1030(a) -----	2502(b)
1030(b) -----	2511(b)

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1031 -----	6103	1403 -----	6051(a)
1100 -----	7441	1410 -----	3111
1101 -----	7442	1411 -----	6205(a), 6413(a)
1102(a)-(g) -----	7443(a)-(g)	1412 -----	3112
1103(a)-(d) -----	7444(a)-(d)	1420(a) -----	3501
1104 -----	7445	1420(b) -----	6601(a), (f) (1)
1105 -----	7446	1420(c) -----	6011(a), 6071, 6081(a), 6091(a), 6302(b)
1106 -----	7447	1420(d) -----	6313
1110 -----	7451	1420(e) -----	3122
1111 -----	7453	1421 -----	6205(b), 6413(b)
1112 -----	7454(a)	1422 -----	3503
1113 -----	7455	1423(a) -----	6802(1)
1114 -----	7456(a)	1423(b) -----	6803(a) (1)
1114(b) -----	7456(c)	1423(c) -----	6803(a) (2)
1115(a) -----	7457(a)	1424 -----	7509
1115(b) -----	7457(b)	1425(a) -----	7209
1116 -----	7458	1425(b) -----	7208(1)
1117(a)-(f) -----	7459(a)-(f)	1426(a)-(c) -----	3121(a)-(e)
1117(g) -----	6155(a), 6659, 6673	1426(f) -----	7701(a) (1)
1117(h) -----	Omitted	1426(g)-(l) -----	3121(f)-(k)
1118 -----	7460	1427 -----	3123
1119 -----	6902	1428 -----	3124
1120 -----	7461	1429 -----	7805(a), (c)
1121 -----	7462	1430 -----	Omitted
1130 -----	7471	1431 -----	Omitted
1131 -----	7472	1432 -----	3125
1132 -----	7473	1500 -----	3201
1133 -----	7474	1501(a), (b) -----	3202(a), (b)
1140 -----	7481	1501(c) -----	6205(n) (1), 6413(a) (1)
1141 -----	7482	1502 -----	6205(b), 6413(b)
1142 -----	7483	1503 -----	3502(a)
1143 -----	7484	1510 -----	3211
1144 -----	Omitted	1511 -----	3212
1145 -----	7101, 7485(a)	1512 -----	3502
1146 -----	7486	1520 -----	3221
1250 -----	1491	1521 -----	6205(a) (1), 6413(a) (1)
1251 -----	1492	1522 -----	6205(b), 6413(b)
1252 -----	1493	1530(a) -----	3501
1253 -----	1494, 6071, 6081 (a), 6091(a), 6151(a)	1530(b) -----	6011(a), 6071, 6081(a), 6091 (a), 6151(a)
1400 -----	3101	1530(c) -----	6601(a), (f) (1)
1401(a), (b) -----	3102(a), (b)	1530(d) -----	6313
1401(c) -----	6205(a), 6413(a) (1)	1531 -----	3503
1401(d) (1) -----	Omitted	1532(a)-(e) -----	3231(a)-(e)
1401(d) (2) -----	Omitted	1532(f) -----	7701(a) (9)
1401(d) (3) -----	6413(c) (1)	1532(g), (h) -----	3231(f), (g)
1401(d) (4) -----	6413(c) (2)		
1402 -----	3502		

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1532(i) -----	7701(a) (1)
1534 -----	3232
1535 -----	7805(a), (c)
1536 -----	Omitted
1537 -----	Omitted
1538 -----	3233
1600 -----	3301
1601(a), (b), (c) ---	3302
1601(d) -----	6413(d)
1602 -----	3303
1603 -----	3304
1604(a) -----	6011(a), 6065, 6071, 6091(b) (1), (2)
1604(b) -----	6081(a)
1604(c) -----	6106
1605(a) -----	3501
1605(b) -----	6601(a), (f) (1)
1605(c) -----	6152(a) (3), (b), 6155(a), 6601(c) (2)
1605(d) -----	6161(a) (1)
1605(e) -----	6313
1606 -----	3305
1607(a)-(j) -----	3306(a)-(j)
1607(k) -----	7701(a) (1)
1607(l)-(o) -----	3306(k)-(n)
1608 -----	3307
1609 -----	7805(a), (c)
1610 -----	Omitted
1611 -----	3308
1621 -----	3401
1622(a), (b) -----	3402(a), (b)
1622(c) (1) (A) -----	Omitted
1622(c) (1) (B), (2)-(5) -----	3402(c)
1622(d) -----	3402(d)
1622(e) -----	3502(b)
1622(f) (1) -----	6414
1622(f) (2) -----	6401, 6402
1622(g)-(k) -----	3402(e)-(i)
1623 -----	3403
1624 -----	3404, 6011(a)
1625(c) -----	6081(a)
1626(a) -----	7204
1626(b) -----	6674
1626(d) -----	7205
1627 -----	Omitted
1631 -----	6651(a)
1632 -----	2504
1633(a), (b) -----	6051(a)-(d)

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1633(c) -----	6081(a)
1634(a) -----	7204
1634(b) -----	6659, 6674
1635(a) -----	6501(a)
1635(b) -----	6501(c) (1), (3)
1635(c) -----	6501(c) (2)
1635(d) -----	6502(a)
1635(e) -----	6501(b) (2)
1635(f) -----	Omitted
1635(g) -----	Omitted
1636(a) (1) -----	6511(a), (b) (1)
1636(a) (2) -----	6511(b) (2)
1636(b) -----	Omitted
1636(c) -----	6513(c)
1636(d) -----	Omitted
1636(e) -----	Omitted
1650 -----	4001, 4011, 4021, 4471
1651 -----	4031
1652 -----	Omitted
1653 -----	Omitted
1654 -----	Omitted
1655 -----	Omitted
1656(a), (b), (c) ---	5063(a), (b), (c)
1657 -----	Omitted
1658 -----	Omitted
1659 -----	Omitted
1700 -----	4231, 4232, 6011 (a)
1701 -----	4233
1702 -----	4234
1703 -----	4234
1704 -----	4232
1710 -----	4241
1711 -----	4243
1712 -----	4242
1715(a) -----	4291
1715(b), (c) -----	6151(a)
1715(d) -----	6415(b), (c), (d), 6416(a)
1716(a) -----	6011(a), 6065(a)
1716(b) -----	6071, 6081(a)
1716(c) -----	6091(b) (1), (2)
1717 -----	6001(a), (f) (1)
1718(a) -----	7201, 7203
1718(b) -----	7201, 7202
1718(c) -----	6659, 6671(a), 6672
1718(d) -----	6671(b), 7343
1719 -----	6302(b)
1720 -----	6001

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
1721 -----	Omitted	1851 -----	4291
1722 -----	Omitted	1852(a) -----	6011(a), 6065(a), 6071
1723 -----	Omitted	1852(b) -----	6091(b) (1), (2)
1800 -----	4301, 4311, 4321	1853(a) -----	6151(a)
1801 -----	4311, 4312, 4313, 4314, 4315, 4381	1853(b) -----	6151(a)
1802 -----	4301, 4302, 4304, 4321, 4322, 4323, 4341, 4342, 4343, 4344, 4351, 4352, 4353, 4381	1853(c) -----	6601(a), (f) (1)
1804 -----	4371, 4372, 4373	1854 -----	6415(a), (b), (d)
1805 -----	4891, 4892, 4894, 4895, 4896, 7701(a) (1)	1855 -----	Omitted
1807 -----	4451	1856 -----	Omitted
1808 -----	4303, 4373, 4382	1857 -----	4287
1809 -----	4383, 4454, 4893, 6201(a) (2), 6801(a), (b)	1858 -----	Omitted
1815 -----	6804	1859 -----	Omitted
1816 -----	Omitted	1900 -----	4881
1817(a) -----	6802(1)	1901 -----	4883
1817(b) -----	6802(2)	1902 -----	4884
1817(c) -----	6802(3)	1902(a) (1) -----	6011(a), 6065(a), 6071
1818(a) -----	6803(b) (1), 7101	1902(a) (2) -----	6091(b) (1), (2)
1818(b) -----	6803(b) (2)	1902(a) (3) -----	6151(a)
1819 -----	Omitted	1902(b) -----	6151(a)
1820 -----	7271(2), (3)	1903 -----	4885
1821(a) (1) -----	7201, 7203	1904 -----	Omitted
1821(a) (2) -----	7201, 7202	1905 -----	4882
1821(a) (3) -----	6653(c), 6659, 6671(a), 6672	1906 -----	4883
1821(a) (4) -----	6671(b), 7343	1907 -----	Omitted
1821(b) (3) -----	4374, 7270	1920(a) -----	4851(a)
1821(b) (4) -----	7201	1920(b) -----	4851(b)
1822 -----	7208(3), 7271(1)	1920(c) -----	4871, 6804
1823 -----	7303(1)	1921 -----	4861
1823(a) -----	7208(2)	1922 -----	4863
1823(b) -----	7208(3)	1923 -----	4864
1823(c) -----	7208(4)	1924 -----	4865
1830 -----	4453	1925 -----	4853, 7492
1831 -----	4452, 4455, 7272	1926 -----	4854
1832 -----	4456	1927 -----	4862
1835 -----	6001	1928 -----	4872, 6001
1836 -----	Omitted	1929(a) -----	7233(1), (2)
1837 -----	Omitted	1929(b) -----	7263(b)
1838 -----	Omitted	1929(c) -----	7263(a)
1850 -----	4286	1930 -----	4874, 7493
		1931 -----	4852, 7701(a) (1),
		1932 -----	4873
		1933 -----	4876
		1934 -----	Omitted
		1935 -----	4875
		2000(a) -----	5701(a)
		2000(b) -----	5701(a)
		2000(c) (1) -----	5701(b)
		2000(c) (2) -----	5701(c)
		2000(d) -----	5701(d), (e)

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
2000(g) (1) -----	5707(a)
2000(g) (2) -----	5707(b)
2000(g) (3) -----	5707(c)
2001(a) -----	5703(a)
2002(b) -----	5703(d)
2002(c) -----	5703(a)
2010 -----	5702(b)
2012 -----	5712
2013 -----	5711(a), (b)
2014 -----	5713(a), (b)
2017 -----	5721
2018 -----	5741
2019 -----	5722
2030 -----	5702(e)
2032 -----	5712
2033 -----	5711(a), (b)
2036 -----	5721
2037 -----	5741
2038 -----	5722
2039(a) -----	5711(a), (b)
2039(b) -----	5722, 5741
2040 -----	5704(c)
2050 -----	5702(b) (1)
2052 -----	5712
2053 -----	5711(a), (b)
2054 -----	5713(a), (b)
2055 -----	Omitted
2056 -----	5741
2057 -----	Omitted
2058 -----	5732
2059 -----	5731
2060 -----	5731
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2100(b) -----	5723(a)
2100(c) (1) -----	5723(d)
2100(c) (2) -----	5723(a)
2100(d) -----	5723(b), (c)
2100(e) -----	5723(a)
2101 -----	5704(c)
2102 -----	5723(a)
2103(a) (1) -----	5723(a)
2103(e) -----	5752
2104(a) -----	5751(a)
2110(a) -----	5702(c)
2110(b) -----	5702(d)
2111(a) (1) -----	5723(a)
2111(a) (2) -----	5723(a)
2111(a) (3) -----	5723(d)
2111(b) -----	5723(a)
2111(c) -----	5723(b), (c)

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2111(d) -----	5723(a)
2111(e) (1) -----	5723(a)
2111(e) (2) -----	5723(d)
2111(f) -----	5704(a), 5723(d)
2112(a) (1) -----	5723(a)
2112(e) -----	5752
2113 -----	5751(a)
2130(a) -----	5723(a), 5762(a) (4), 5762(a) (6)
2130(b) -----	5723(a), 5762(a) (4), 5762(a) (6)
2130(c) -----	5723(a), 5762
2130(d) -----	5704(d)
2135(a) (1) -----	5704(b)
2135(a) (2) -----	5704(c)
2135(a) (3) -----	5704(b)
2136(a) -----	5706
2137 -----	5705(a)
2150 -----	Omitted
2151 -----	5762(a) (5)
2152 -----	Omitted
2153 -----	Omitted
2154 -----	Omitted
2155(a) -----	5762(a) (4), 5762(a) (5)
2155(b) -----	5763(a)
2156(a) -----	5762(a) (2), 5762(a) (3)
2156(b) -----	5762(a) (3)
2156(c) -----	5761(b)
2160(a) -----	5762(a) (4)
2160(b) -----	5762(a) (5)
2160(c) -----	5762(a) (5)
2160(d) -----	5762(a) (5)
2160(e) -----	5762(a) (6)
2160(g) (1) -----	5762(a) (8)
2160(g) (2) -----	5762(a) (9)
2160(g) (3) -----	5762(a) (6)
2160(h) -----	5763(a)
2160(i) -----	5762(a) (9), 5762(a) (10)
2161(a) -----	5762(a) (1)
2161(b) -----	5763(c)
2161(c) -----	5762(a) (1)
2161(e) -----	5762(a) (2)
2161(f) -----	5762(a) (2)
2161(g) -----	5762(a) (2)
2161(h) -----	5763(b)
2161(i) (1) -----	5763(b)
2161(j) (1) -----	5763(b)

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2161(l) (1) -----	5763(b)	2302 -----	4594, 4596, 6001, 7101, 7641
2161(m) (1) -----	5761(a)	2303 -----	4595, 4597, 6001
2161(m) (2) -----	5763(b)	2304 -----	4595
2162(a) (2) -----	5762(a) (1)	2305 -----	4813
2162(a) (3) -----	5762(a) (2)	2306 -----	4591, 4812
2162(a) (4) -----	5762(a) (2)	2307 -----	4593, 4816
2162(a) (5) -----	5762(a) (2)	2308(a) -----	7234(a)
2162(b) (1) -----	5762(a) (4), 5762 (a) (5)	2308(b) -----	7265(a) (1)
2163 -----	Omitted	2308(c) -----	7234(b)
2170(a) (2) -----	5751(a), 5762(a) (5)	2308(d) -----	7234(d) (4)
2170(a) (4) -----	5762(a) (6)	2308(e) -----	7265(b)
2170(b) -----	5762(a) (5), 5763 (a)	2308(f) -----	Omitted
2171(a) -----	5763(a)	2308(g) -----	7234(d) (2)
2171(b) (1) -----	5762(a) (4)	2308(h) -----	7234(c)
2171(b) (2) -----	5762(a) (4), (a) (5)	2308(i) -----	7234(d)
2172(a) -----	5762(a) (8)	2308(j) -----	7265(c)
2172(b) -----	5762(a) (6)	2309 -----	7303(2), (3), (5)
2172(c) -----	5762(a) (9)	2310 -----	Omitted
2172(d) -----	5762(a) (6)	2311 -----	4591, 4818
2172(e) -----	5762(a) (9)	2312 -----	Omitted
2172(f) -----	5762(a) (9)	2313 -----	Omitted
2173(a) -----	5762(a) (5)	2314 -----	Omitted
2174 -----	5762(a) (5)	2320 -----	4826
2175 -----	5763(a)	2321 -----	4811, 4813
2176(a) (2) -----	5762(a) (10)	2322 -----	4814, 4826, 6001, 7101, 7641
2176(a) (3) -----	5762(a) (8)	2323 -----	4815, 4826
2180(a) -----	5762(a) (1)	2324 -----	4815, 6001
2180(b) -----	5763(c)	2325 -----	4817
2180(d) -----	5762(a) (2)	2326(a) -----	7235(a), 7265(a)
2180(e) -----	5762(a) (2)	2326(b) -----	7235(b)
2180(f) -----	5762(a) (2)	2326(c) -----	7235(c)
2180(g) (1) -----	5763(b)	2327 -----	4812, 4813, 4816, 4818, 7235(c), 7265(b), (c)
2180(h) -----	5763(b)	2350 -----	4846
2180(i) (1) -----	5763(b)	2351 -----	4831, 4832, 6201(a) (2) (A)
2180(k) (1) -----	5763(b)	2352 -----	4833, 4846, 6001, 7101, 7641
2180(l) (1) -----	5761(a)	2353 -----	4834, 4846
2180(l) (2) -----	5763(b)	2354 -----	4834, 4846
2181 -----	Omitted	2355 -----	4832
2190 -----	5753	2356 -----	4831, 4832
2191 -----	Omitted	2357 -----	7236, 7266(b) -(f)
2192 -----	Omitted	2358 -----	7303(2), (4), (5)
2193 -----	Omitted	2359 -----	Omitted
2194 -----	5703(a), 5722, 5741	2360 -----	4835
2197(b) -----	5704(b)	2361 -----	4832
2198 -----	5705(a)	2362 -----	Omitted
2300 -----	4592, 4593		

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2400 -----	4001, 4003
2401 -----	4011, 4012
2402 -----	4021, 4022
2403(a) -----	6011(a), 6065(a), 6071, 6081(a), 6001(b) (1), (2)
2403(b) -----	6151(a), 6601(a), (f) (1)
2403(c) -----	4051
2404 -----	4052
2405 -----	4053
2406 -----	4055, 4056
2407 -----	6416(a), (b)
2408 -----	Omitted
2409 -----	7261
2410 -----	Omitted
2411 -----	Omitted
2412 -----	4002, 4003, 4012, 4013
2413 -----	4054
2450 -----	4011
2451(a) -----	6011(a), 6071, 6081(a), 6091(b) (1), (2), 6151(a)
2451(b) -----	6151(a), 6601(a), (f) (1)
2452(a) -----	6416(b) (2) (D)
2452(b) -----	6416(a)
2453 -----	4055, 6416(b) (2) (A)
2454 -----	Omitted
2455 -----	Omitted
2456 -----	4222
2470 -----	4511, 4513
2471 -----	6011(a), 6065(a), 6071, 6081(a), 6001(b) (1), (2)
2472 -----	6151(a)
2473 -----	6417(a)
2474 -----	4513, 6417(b), 7101
2475 -----	6601(a), (f) (1)
2477 -----	4512
2478 -----	Omitted
2479 -----	Omitted
2480 -----	7809(a)
2481 -----	Omitted
2482 -----	Omitted
2483 -----	7654
2490 -----	4561, 4571, 4581

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2491 -----	4561, 4562, 4571, 4572, 4581, 4582
2492 -----	4582, 4602
2493 -----	4601
2494 -----	Omitted
2550 -----	4701, 4771
2550(c) -----	6302(b)
2551 -----	4702
2552 -----	4703, 4771
2553 -----	4704, 4723
2554 -----	4705
2555 -----	4732, 6001
2555(a) -----	6065(a)
2555(b) -----	6071
2555(c) -----	6065(a), 6071
2555(c) (1) -----	6081(a), 6091(a)
2556 -----	4773
2557(a) -----	7237(b)
2557(b) (1) -----	7237(a)
2557(b) (2) -----	7201, 7203
2557(b) (3) -----	7201, 7202
2557(b) (4) -----	6671(a), 6672
2557(b) (8) -----	6671(b), 7343
2558 -----	4706, 4733, 7301(a)
2559 -----	Omitted
2560 -----	Omitted
2561 -----	4734
2562 -----	4736
2563 -----	4774
2564 -----	4735
2565 -----	Omitted
2567 -----	4711, 4712
2568 -----	4712
2569 -----	4713
2569(b) -----	7101
2569(d) -----	6001
2569(d) (4) -----	7641
2570 -----	7238
2571 -----	4714, 7301(a)
2590 -----	4741, 4771
2591 -----	4742
2592 -----	4743, 4771
2593 -----	4744
2594(a) -----	6001
2595 -----	4773
2596 -----	7237(a)
2597 -----	7491
2598 -----	4745, 7301(a)
2599 -----	Omitted
2600 -----	Omitted
2601 -----	4756

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2602	4774	2710	Omitted
2603	4762	2711	Omitted
2604	Omitted	2712	Omitted
2606	Omitted	2720	5811
2650	4802	2721	5812
2651	4801, 4803	2722	5813
2651(c) (2)	6201(a) (2) (A)	2723	5814
2652(a)	6801(a)	2724	5842, 6001(a)
2653	4804	2725	5843
2653(b)	6001, 7641	2726(a)	5851
2653(d)	7101	2726(b)	5852
2654	4805	2726(c)	5853
2655	4805	2727	5844
2656	7274	2728	5845
2656(a)	7206(4)	2729	5861
2656(b)	7239(a)	2730(a)	5862(a)
2656(c)	7271(1), 7303(6) (B)	2730(b)	5862(b)
2656(d)	7239(b)	2731	5846
2656(f)	7201	2732	5847
2656(g)	7272	2733	5848
2656(h)	7267(d)	2733(a)	7701(a) (1)
2656(i)	7267(c)	2734	5821
2656(j)	7267(a)	2734(e)	6071, 6001(a)
2656(k)	7267(b)	2800(a)	5001(a) (9)
2657(a)	7303(G) (B)	2800(a) (1)	5001(a) (1), 5005(a), 5006(a)
2657(b)	7303(G) (B)	2800(a) (1) (A)	5026(a) (1), 5007(a)
2657(c)	7303(G) (A)	2800(a) (1) (B)	5689
2657(d)	7328	2800(a) (2)	5001(a) (2)
2657(e)	7301(c)	2800(a) (3)	5001(a) (3), 5007(b) (2)
2657(f)	7303(G) (B)	2800(a) (4)	5001(a) (4), 5007(c)
2658	Omitted	2800(a) (5)	5021(a), 5025(b)
2659	4803	2800(a) (6)	5001(a) (5)
2660	Omitted	2800(b) (2)	5006(c)
2700	4181, 4182, 4224, 5831	2800(c)	5001(b)
2701	6011(a), 6065(a), 6071, 6081(a), 6001(b) (1), (2)	2800(d)	5005(b)
2702	6151(a)	2800(e) (1)	5004(a) (1)
2703(a)	6416(f)	2800(e) (2)	5004(a) (2)
2704	4216	2800(e) (3)	5004(a) (3)
2705	4225, 6416(e)	2800(e) (4)	5004(a) (4)
2706	6601(a), (f) (1)	2800(f)	5006(d), 5007 (b) (1)
2707(a)	6671(a), 6672	2801(b)	5021(b)
2707(b)	7201, 7203	2801(c) (1)	5331
2707(c)	7201, 7202	2801(c) (2)	5025(e)
2707(d)	6671(b), 7343	2801(d)	5281
2708	6302(b)	2801(e)	5025
2709	6001		

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2801(c) (1) -----	5272(a), 5281(a)
2801(e) (2) -----	5273(a), 5627
2801(e) (3) -----	5386(b), 5391
2801(e) (4) -----	5386(a)
2801(e) (5) -----	5023
2801(f) -----	5628
2802(a) -----	5009(a), 5010(a)
2802(b) -----	5010(b)
2802(c) -----	5027(a)
2803(a) -----	5008(b) (1) (E)
2803(b) -----	5008(b) (3)
2803(c) -----	5008(b) (4)
2803(d) -----	5008(b) (2)
2803(e) -----	5008(b) (5)
2803(f) -----	5640
2803(g) -----	5642
2804 -----	5211
2805(a) -----	5688(a)
2805(b) -----	5688(b)
2806(a) (1), (2) -----	5634
2806(b) (1) -----	5645
2806(c) -----	5625
2806(d) -----	5639
2806(e) -----	5646
2806(f) -----	5626
2806(g) -----	5687
2807 -----	5622
2808(a) -----	5212(a)
2809(a) -----	5002(a)
2809(b) (1) -----	5002(b) (1)
2809(b) (2) -----	5002(b) (2)
2809(c) -----	5002(c)
2809(d) -----	5002(d)
2810(a) -----	5174(a), 5601
2811 -----	5213(a), 5609
2812(a) -----	5175(n), 5271, 5603
2813(a) -----	5282
2814(a) (1) -----	5176(a), (c), 5177(c), 5604
2814(a) (2) -----	5176(d)
2815(a) -----	5177(a), 5605
2815(b) (1) (A) -----	5177(b) (1)
2815(b) (1) (B) -----	5177(b) (2)
2815(b) (1) (C) -----	5177(b) (3)
2815(b) (1) (D) -----	5177(b) (4)
2815(c) -----	5551(a)
2815(d) -----	5551(b) (1)
2815(e) -----	5551(c)
2816(a) -----	5178
2817(a) -----	5179(a)

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2817(b) -----	5179(b)
2818(a) -----	5105(a)
2818(b) -----	5602
2819 -----	5171, 5607
2820(a) -----	5173(b), 5192(b), 5193(a)
2821 -----	5682
2822(a) -----	5173(a), 5618
2823(a) -----	5173(c)
2824 -----	Omitted
2825 -----	5215
2826(a) -----	5196(a), 5617
2827(a) -----	5196(b), 5616
2828(a) -----	5196(c), 5283, 5615
2829(a) -----	5552
2830(a) -----	5196(d), 5283
2831 -----	5116(a), 5180(a), 5274(a), 5681
2832 -----	5172
2833(a) -----	5606
2834 -----	5216(a), 5608(a), (b)
2835 -----	Omitted
2836 -----	5195(a), 5613
2837 -----	Omitted
2838 -----	5192(c), 5612
2839(a) -----	5196(e), 5619
2840 -----	Omitted
2841(a) -----	5197(a) (1) (A)
2841(b) -----	5197(a) (1) (B)
2841(c) -----	5620
2842 -----	5611
2843 -----	5610
2844(a) -----	5197(b)
2845 -----	Omitted
2846(a) -----	5007(c) (1)
2847(a) -----	5007(c) (2)
2848 -----	Omitted
2849 -----	5191(a)
2850(a) -----	5191(a), 5650
2851 -----	5682
2852 -----	5624
2853(a) -----	5623
2854 -----	5649
2855(a) -----	5285(a)
2856 -----	5629
2857(a) -----	5114(a), 5285(b), 5621
2858 -----	5114(b)

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2859 -----	5197(a) (2), 5621	2901(a) (2) -----	5011(a) (1) (B), 5011(b)
2860 -----	Omitted	2901(b) -----	5011(a) (1) (B), (2)
2861(a) -----	5282(b)	2901(c) -----	5011(a) (3)
2862(a) -----	5282(c)	2901(d) -----	5011(a) (4)
2863(a) -----	5115(a)	2903(a) -----	5243(a)
2865(a) -----	5630	2903(b) -----	5008(a) (1)
2866 -----	5010(c), 5636	2903(c) -----	5008(a) (2)
2867 -----	5635	2903(d) -----	5008(a) (3)
2868 -----	5637	2903(e) -----	5008(a) (4)
2869 -----	5638	2903(f) -----	5243(d)
2870 -----	5195(b), 5614	2903(g) -----	5243(c)
2871 -----	5214(a), 5641	2904(a) -----	5243(a), (b)
2872 -----	5231, 5241(b)	2905 -----	5243(e)
2873 -----	5231, 5241(a)	2908 -----	5643
2874(a) -----	5252	2909 -----	5644
2875 -----	5231, 5246(a)	2910(a) -----	5243(b)
2876 -----	5631	2911 -----	5243(f)
2877(a) -----	5192(d)	2912 -----	5632
2878(a) -----	5193(a)	2913 -----	5632
2878(b) -----	5009(c), 5193(b)	2914(a) -----	5633
2878(c) -----	5193(c)	2915(a) -----	5241(c)
2878(d) -----	5193(d)	2916(a) -----	5194(b)
2879(a) -----	5242(a)	3030(a) -----	5001(a) (9)
2879(b) -----	5006(a)	3030(a) (1) -----	5001(a) (5), (9), 5041(a), 5041(b), 5042(a) (2), 5362, 5368(b)
2879(c) -----	5232(a)	3030(a) (2) -----	5022, 5041(b) (4)
2879(d) -----	5232(a), (c)	3030(b) -----	5043(b)
2880(a) -----	5006(b)	3031(a) -----	5354, 5362, 5373(b) (1), 5373(b) (3), 5391
2881(a) -----	5245	3032(a) -----	5373(a), 5382(b) (2)
2882(a) -----	5244	3033(a) -----	5373(b) (1)
2883(a) -----	5194(a)	3034(a) -----	5366
2883(b) -----	5194(d)	3035 -----	5366
2883(c) -----	5194(c)	3036 -----	5025(f), 5373(a), 5381, 5382(a), (b) (1), (2); 5383(a), (b) (3), (4); 5392
2883(d) -----	5194(e) (1)	3037(a) -----	5362, 5373(b) (4)
2883(e) -----	5025(d), 5194(f)	3038(a) -----	5362
2883(f) -----	5194(g)	3039(a) -----	5370(a) (1)
2883(g) -----	5194(h)	3040(a) -----	5351, 5354, 5356, 5368(a), (b); 5369
2884(a) -----	5250(a)	3041(a) -----	5043(b), 5368(a)
2885(a) -----	5247(a)		
2885(b) -----	5009(b), 5247(b)		
2885(d) -----	5648		
2886(a) -----	5247(c)		
2887 -----	5012(a)		
2888(a) -----	5247(d)		
2889 -----	Omitted		
2890 -----	Omitted		
2891(a) -----	5522(a)		
2891(b) -----	5011(a)		
2900 -----	5006(a)		
2901(a) (1) -----	5011(a) (1) (A)		

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3043(a) -----	5661(a), (b); 5385(b)
3044 -----	5381, 5382, 5383, 5392
3045 -----	5381, 5382, 5384, 5392
3070(a) -----	5331(a)
3070(b) -----	5331(b), (c)
3072 -----	5647
3073(a) -----	5332
3074(a) -----	5333
3100(a) -----	5301
3101(a) -----	5302
3102 -----	5303
3103 -----	5306
3104(a) -----	5309, 5412
3105(a) -----	5305
3106(a) -----	5307
3107 -----	5308
3108(a) -----	5310(a)
3108(b) -----	5310(b)
3108(c) -----	5310(c)
3108(d) -----	5310(d)
3109 -----	5310(a)
3110 -----	5502
3111 -----	5001(a) (6)
3112(a) -----	5004(b), 5005(c)
3112(b) -----	5007(d), 5689
3113(a) -----	5011(c)
3114(a) -----	5304(a)
3114(b) -----	5304(b)
3114(c) -----	5304(c)
3114(d) -----	5304(d)
3115(a) -----	5686(a)
3116 -----	5686(b), 7302
3117(a) -----	5314
3118 -----	5688(d)
3119 -----	5315
3120 -----	5316
3121(a) -----	5313(a)
3121(c) -----	5313(b)
3121(d) -----	5317(b)
3122 -----	5317(a)
3123 -----	5318
3124(a) -----	5319
3125(a) -----	5001(a) (8), 5007(d), 5311
3125(b) -----	5310(b)
3126 -----	Omitted
3150(a) -----	5051(a)

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3150(b) (1) -----	5054
3150(b) (2) -----	5055
3150(b) (3) -----	5689
3150(c) -----	5051(b)
3152 -----	Omitted
3153(b) -----	5053(a), 5401(b)
3153(c) -----	5053(b)
3155(a) -----	5401(a)
3155(b) -----	5401(b)
3155(c) -----	5415(a)
3155(f) -----	5412, 5413, 5675
3156 -----	Omitted
3157(a) -----	5055
3158 -----	5402(a), 5411
3159(a)-(c) -----	5671, 5672, 5673, 5674
3159(e) -----	5676(1)
3159(f) -----	5676(2)
3159(g) -----	5676(3)
3159(h) -----	5676(4)
3159(i) -----	5676(5)
3159(j) -----	5674
3160 -----	5052(b)
3170 -----	Omitted
3171(a) -----	5367, 5555(a)
3172(a) -----	5061(b)
3173(a) -----	5683
3173(b) (1)-(3) -----	5684
3173(b) (4) -----	5690
3173(c) -----	5685
3173(d) -----	5688(c)
3174 -----	5064
3175 -----	5557
3176(a) -----	5556
3177(a) -----	5521(a)
3177(b) -----	5521(c) (1), (2)
3177(c) -----	5521(b)
3177(d) (1) -----	5521(d) (1)
3177(d) (2) -----	5521(d) (2)
3178 -----	5523
3179(a) -----	5062(a)
3179(b) -----	5062(b)
3180 -----	Omitted
3182(a) -----	5511
3182(b) -----	5001(a) (7)
3183(a) -----	5217(a)
3183(b) -----	5217(b)
3183(c) -----	5217(c)
3190-3195 -----	Omitted
3206 -----	4821

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3207	7235(d), 7264	3250(l) (3)	5132
3208	4822, 4826	3250(l) (4)	5133
3210	4841	3250(l) (5)	5134
3211	7266(a)	3251(a)	5113(d) (1)
3212	4842	3251(b)	5113(d) (2)
3220	4721, 6001, 6151(a)	3251(c)	5123(c)
3221	4722	3252(a)	5124(a)
3222	4772	3252(b)	5124(b)
3223	Omitted	3252(c)	5124(c)
3224	4724	3252(d)	5092
3225	7237(a)	3253	5091, 7301(a)
3226	4775	3254(b)	5112(a)
3227	4725	3254(c) (1)	5122(a)
3228	4731, 7343, 7701(a)	3254(c) (2)	5111
3230	4751, 4752, 6151(a)	3254(d)	5052(a), 5092, 5402(a)
3231	4753	3254(e)	5112(b)
3232	4772	3254(f)	5122(b)
3233	4754, 6001, 6005(a), 6071, 6081(a), 6091(a)	3254(g)	5025(c), 5082, 5387(c)
3234	4755	3254(h)	5102
3235	7237(a)	3255(a)	5123(b) (1)
3236	4775	3255(b)	5123(b) (2)
3237	4756	3255(c)	5123(b) (3)
3238	4761, 7701(a)	3260	5801(a)
3239	Omitted	3261(a)	5802
3250(a) (1)	5111(a) (1)	3261(b)	5841
3250(a) (3)	5111(a) (2)	3262	5803
3250(a) (4)	5113(a)	3263(a)	5854(a)
3250(b) (1)	5121(a) (1)	3263(b)	5854(a), (b)
3250(b) (2)	5122(c)	3267	4461, 4462, 4463
3250(b) (4)	5121(a) (2)	3268	4471, 4472, 4473
3250(c) (1)	5091	3270(a)	5141, 7011(a)
3250(d) (1)	5111(b) (1)	3271	4901
3250(d) (2)	5111(b) (2)	3271(a)	5142(a)
3250(d) (3)	5091, 5113(b)	3271(b)	5142(b), 6151(a)
3250(e) (1)	5121(b) (1)	3271(c) (1)	5104, 5142(c)
3250(e) (2)	5121(b) (2)	3272(a)	5143(a), 6011(a), 6005(a), 6071, 6081(a), 6091(b), 6151(a)
3250(e) (3)	5121(c)	3273(a)	5145, 6801(a)
3250(e) (4)	5123(a)	3273(b)	5146, 6806(a)
3250(f) (1)	5081	3274	5693, 7273(a)
3250(g)	5113(c)	3275	5147, 6107
3250(h)	5025(g)	3276	4906, 5148
3250(i)	5025(h)	3277	4902, 5144(a)
3250(j) (1)	5101	3278	4903, 5144(c)
3250(j) (3)	5106	3279	4904, 5144(b)
3250(l) (1)	5131(a)	3280(a)	4905, 5144, 7011(b)
3250(l) (2)	5131(b)	3281	6302(b)

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3282 -----	5149, 6302(b)
3283 -----	4907, 5144(e)
3285 -----	4401, 4404, 4402, 4421
3286 -----	6419
3287 -----	4403
3290 -----	4411
3291 -----	4412, 6091(b)
3292 -----	4413, 4907, 6107
3293 -----	6806(c)
3294 -----	7262, 7273(b)
3297 -----	4422
3298 -----	4423
3300(a) -----	6801(a)
3300(b) -----	7208
3300(c) -----	6808
3301(a) -----	6801(b), 6804
3301(b) -----	6808
3303 -----	Omitted
3304(a) -----	6805(a)
3304(b) -----	6805(b)
3304(c) -----	6805(c)
3304(d) -----	6805(d)
3304(e) -----	Omitted
3305 -----	Omitted
3310 -----	6331(a)
3310(a) -----	6011(a), 6071, 6601(c) (4), 6659
3310(b) -----	6011(a), 6601(c) (4), 6659
3310(c) -----	6601(a), 6601(f) (1), 6659
3310(d) -----	6155(a), 6601(f) (1), 6659
3310(e) -----	6659
3310(f) (1) -----	6011(a), 6071, 6081(a)
3310(f) (2) -----	5703(c), 6302(c)
3311 -----	6155(a), 6201(a) (2) (A), 6601(c) (4), 6659
3312(a) -----	6501(a)
3312(b) -----	6501(c) (1), 6501(c) (3)
3312(c) -----	6501(c) (2)
3312(d) -----	6502(a)
3313 -----	5705(a), 6511(a), 6511(b) (1), (2)
3314 -----	Omitted
3320(a) -----	7268
3320(b) -----	Omitted

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3321 -----	7206(4)
3321(b) -----	7301
3321(c) -----	Omitted
3322 -----	7301(d)
3323(a) (1) -----	7271(4)
3323(a) (2) -----	7271(4)
3323(a) (3) -----	7208(5)
3323(b) -----	7303(7)
3324(a) -----	7341(a)
3324(b) -----	7341(b)
3324(c) -----	7341(c)
3325 -----	7211
3326 -----	7304
3330 -----	6065(a)
3331 -----	7510
3332-3335 -----	Omitted
3350(a) -----	7652(b) (1)
3350(b) -----	7652(b) (2)
3351(a) -----	7653(a) (2)
3351(b) -----	7653(b)
3351(c) -----	7653(c)
3360(a) -----	7652(a) (1)
3360(b) -----	7101, 7652(a) (2), 7803(c)
3360(c) -----	7652(a) (3)
3361(a) -----	7653(a) (1)
3361(b) -----	7653(b)
3361(c) -----	7653(c)
3400(a), (c) -----	4071, 4072, 4073
3400(b) -----	Omitted
3401 -----	Omitted
3403 -----	4061, 4062, 4063
3403(c) -----	6416(c)
3404 -----	4141, 4142, 4143, 4151, 4152
3405 -----	4111, 4112, 4113
3406(a) (1) -----	4161
3406(a) (2) -----	Omitted
3406(a) (3) -----	4121
3406(a) (4) -----	4171, 4172, 4173
3406(a) (5) -----	Omitted
3406(a) (6) -----	4191, 4192
3406(a) (7) -----	Omitted
3406(a) (8) -----	Omitted
3406(a) (9) -----	Omitted
3406(a) (10) -----	4131
3406(b) -----	4221
3406(c) -----	Omitted
3407 -----	4181, 4182, 4224, 5831
3408 -----	4201, 4221

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3408(b) -----	6416(d)	3469(d) -----	4291, 6011(a), 6065(a), 6071, 6091(b), 6151(a)
3409(a) -----	4211		
3409(b) -----	Omitted	3469(e) -----	6081(a), 6161(a)
3412(a)-(f) -----	4081, 4082, 4083, 4101, 4102, 7101, 7232	3469(f) -----	4262, 4292
3412(g) -----	6412(b)	3470 -----	6151(a), 6601(a), (f)
3413 -----	4091, 4092, 4093, 7101	3471 -----	6415, 6416(f)
3414 -----	Omitted	3472 -----	Omitted
3415 -----	Omitted	3473 -----	Omitted
3420 -----	4521, 4531, 4541, 4551	3474 -----	Omitted
3422 -----	4521	3475(a) -----	4271, 4272
3423 -----	4531, 4532	3475(b) -----	4272, 4292
3424 -----	4551, 4552, 4553	3475(c) -----	4271, 4291, 6011(a), 6065(a), 6071, 6091(b), 6151(a)
3425 -----	4541, 4542	3475(d) -----	6081(a), 6161(a)
3430 -----	4601	3475(e) -----	4273, 7272
3431 -----	Omitted	3480 -----	4331, 4361
3440 -----	4217	3481 -----	4331, 4332, 4341, 4342, 4343, 4344, 4351, 4352, 4353
3441 -----	4216	3482 -----	4361, 4362
3442 -----	4220, 4224	3483 -----	4382
3443 -----	6416, 6611	3490 -----	4501, 4503
3444 -----	4218	3491 -----	4501, 6011(a), 6071, 6091(b), 6151(a)
3445 -----	4219	3492 -----	4502
3446 -----	4223	3493(a) -----	6418(b)
3447 -----	Omitted	3493(b) -----	6511(c) (2)
3448(a) -----	6011(a), 6065(a), 6071, 6081(a), 6091(b), 6151(a)	3494(a) -----	6418(a)
3448(b) -----	6151(a), 6601(a), (f) (1)	3494(b) -----	6511(c) (1)
3449 -----	Omitted	3495 -----	6601(a), 6601(f)
3450 -----	Omitted	3496 -----	Omitted
3451 -----	4222	3497 -----	Omitted
3453 -----	Omitted	3498 -----	Omitted
3460 -----	4281, 4282, 4283	3500 -----	4501
3461 -----	6011(a), 6065(a), 6071, 6081, 6091(b), 6151(a)	3501 -----	4504
3462 -----	Omitted	3506 -----	7240
3465 -----	4251, 4252, 4253, 4254	3507 -----	4502, 7701(a)
3466 -----	4253, 4292	3508 -----	4501, 6412(c)
3467 -----	4291, 6011(a), 6065(a), 6071, 6081(a), 6091(b), 6151(a), 6161(a)	3600 -----	7601(a)
3468 -----	Omitted	3601(a) (1) -----	7606(a)
3469(a), (b), (c) -----	4261, 4262	3601(a) (2) -----	7606(b)
		3601(b) -----	7342
		3601(c) -----	7212(a), (b)
		3602 -----	Omitted
		3603 -----	6001

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3604(a) -----	6046(a), 6071, 6091(a)
3604(b) -----	6046(b), 6046(c), 6065(a)
3604(c) -----	7203, 7201
3611(a) (1) -----	6011(a), 6065, 6081(a), 6091(a), 6091(b) (1), 6091(b) (2)
3611(a) (2) -----	6020(a), 6065
3611(b) -----	6071
3611(c) -----	6065(a), 6071, 6091(a), 6091(b) (1), 6091(b) (2)
3612(a) -----	6020(b)
3612(c) -----	6020(b)
3612(d) (1) -----	6051(a)
3612(d) (2) -----	6053(b)
3612(e) -----	Omitted
3612(f) -----	6201(a) (1)
3613 -----	6021
3614 -----	7602, 7605(a)
3615 -----	7605(a)
3615(a) -----	7602
3615(b) -----	7602
3615(c) -----	7602
3615(d) -----	7603
3615(e) -----	7601(b)
3616(a) -----	7207
3616(b) -----	7210
3616(c) -----	Omitted
3617 -----	Omitted
3630 -----	6101
3631 -----	7605(b)
3632(a) -----	7622(a)
3632(a) (1) -----	7602
3632(b) -----	7622(b)
3633 -----	7402(b)
3633(a) -----	7604(a)
3633(b) -----	Omitted
3634 -----	6081(a)
3640 -----	6201(a)
3641 -----	6203
3642 -----	6204
3643 -----	Omitted
3644 -----	6202
3645 -----	Omitted
3646 -----	Omitted

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3647 -----	6201(a)
3650 -----	7621
3651(a) (1) -----	6301
3651(a) (2) -----	Omitted
3651(b) -----	Omitted
3652 -----	6302(a)
3653(a) -----	7421(a)
3653(b) -----	7421(b)
3654 -----	Omitted
3655(a) -----	6303(a), 6659
3655(b) -----	6601(a), 6601(f) (1), 6659
3656(a) (1) -----	6311(a)
3656(a) (2) (A) -----	6311(b) (1)
3656(a) (2) (B) -----	6311(b) (2)
3656(b) (1) -----	6311(a)
3656(b) (2) -----	6311(b) (1)
3657 -----	6312(a)
3658 -----	6313
3659(a) -----	6314(a)
3659(b) -----	Omitted
3660 -----	6331(a)
3660(a) -----	6155(a), 6862
3660(b) -----	6863(a), 7101
3661 -----	7501
3662 -----	Omitted
3663 -----	Omitted
3670 -----	6321
3671 -----	6322
3672 -----	7207
3672(a) -----	6323(a)
3672(b) -----	6323(d)
3673(a) -----	6325(a) (1)
3673(b) -----	6325(a) (2)
3674(a) -----	6325(b) (1)
3674(b) -----	6325(b) (2)
3675 -----	6325(c)
3676 -----	7102
3677 -----	Omitted
3678 -----	7403
3679(a) -----	7424(a)
3679(b) -----	Omitted
3679(c) -----	7424(b)
3679(d) -----	7424(c)
3680 -----	Omitted
3690 -----	6331(a), (b)
3691 -----	6334
3692 -----	6331(a), (b), 6334(c)

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3693	6335(e) (2) (E)	3715	6331(c)
3693(a)	6335(a)	3716	6341
3693(b)	6335(b)	3717	Omitted
3693(c)	6335(d)	3720(a) (1)	7301(a)
3693(d)	6335(e) (2) (F)	3720(a) (2)	7301(b)
3694	6342(a)	3720(a) (3)	7301(c)
3695(a)	6335(e) (1), 6335(e) (2) (A)	3720(b)	7321
3695(b)	6335(e) (2), 7505(a)	3720(c)	Omitted
3695(c)	7505(b)	3721	7322
3696	6337(a)	3722	7324
3697(a)	6339(a) (1)	3722(a)	7324(1)
3697(b)	6339(a) (2)	3722(b)	7324(2)
3697(c)	6339(a) (3)	3722(c)	7101, 7324(3)
3697(d)	6339(a) (4)	3722(d)	7324(4)
3698	Omitted	3723(a)	7323(a)
3700	6331(a), (b)	3723(b)	7323(b)
3701	6335(e) (2) (E)	3723(c)	7323(c)
3701(a)	6335(a)	3723(d)	Omitted
3701(b)	6335(b)	3724	7101, 7325
3701(c)	6335(d)	3725	6807
3701(d)	6335(e) (1), (2) (A), (B)	3726	7327
3701(e)	6335(e) (1)	3727	Omitted
3701(f)	6335(e) (2) (D), (F), 6335(e) (3)	3740	7401
3702(a)	6337(a)	3742	Omitted
3702(b) (1)	6337(b) (1)	3743	Omitted
3702(b) (2)	6337(b) (2)	3745	Omitted
3702(c)	6337(c)	3746(a)	7405(a)
3703(a)	6338(c)	3746(b)	6532(b), 7405(b)
3703(b)	6338(a)	3746(c)	Omitted
3704(a)	6338(c)	3746(d)	6602
3704(b)	6338(b)	3747	7406
3704(c) (1)	6339(b) (1)	3748	6531
3704(c) (2)	6339(b) (2)	3760	7121
3705	Omitted	3761	7122
3706(a)	6340(a)	3762	7206(5)
3706(b)	6340(a)	3770(a) (1)	6402(a), 6404(a)
3706(c)-(e)	Omitted	3770(a) (2)	6401(a)
3706(f)	6340(b)	3770(a) (3)	6407
3707	Omitted	3770(a) (4)	6402(a)
3710(a)	6332(a)	3770(a) (5)	6402(a), 6404(a)
3710(b)	6332(b)	3770(b)	7423
3710(c)	6332(c), 7343	3770(b) (1)	7423(1)
3711	6333	3770(b) (2)	7423(2)
3712	6335(c), 6342(b)	3770(c)	6401(c)
3713	Omitted	3771(a)	6611(a)
3714(a)	Omitted	3771(b) (1)	6611(b) (1)
3714(b)	6502(b)	3771(b) (2)	6611(b) (2), 6611(e)
		3771(c)	6611(c)

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3771(d) -----	Omitted
3771(e) -----	6611(f)
3771(f), (g) -----	Omitted
3772(a) (1) -----	7422(a)
3772(a) (2) -----	6532(a) (1)
3772(a) (3) -----	6532(a) (4)
3772(b) -----	7422(b)
3772(c) -----	Omitted
3772(d) -----	7422(c)
3772(e) -----	7422(d)
3773 -----	Omitted
3774 -----	6514(a)
3774(b) -----	6532(a) (2)
3775 -----	6514(b)
3777(a) -----	6405(a)
3777(b) -----	6405(b)
3777(c) -----	6405(c)
3778 -----	Omitted
3779(a) -----	6091(a), 6164(a)
3779(b) -----	6065(a), 6071, 6081(a), 6164(b)
3779(c) -----	6164(c)
3779(d) -----	6164(d)
3779(e) -----	6164(e)
3779(f) -----	6164(f)
3779(g) -----	6164(g)
3779(h) -----	6155(a), 6164(h)
3779(i) -----	6601(a), 6601(e), 6601(f) (1)
3780(a) -----	6065(a), (b), 6071, 6091(a), 6411(a)
3780(b) -----	6411(b)
3780(c) -----	6213(b) (2)
3781 -----	6164(i), 6411(c)
3790 -----	6406, 6611(g)
3791(a) -----	6071, 6081(a), 6091(a), 6091(b) (1), (2), 7805(a)
3791(b) -----	7805(b)
3792 -----	7623
3793 -----	7206(3)
3793(a) (2) -----	7303(8)
3793(b) -----	7206(2), 7207
3793(b) (2) -----	7343
3794 -----	6601(a)
3795(a) -----	7506(a)
3795(b) -----	7506(b)
3795(c) -----	7506(c)
3795(d) -----	7506(d)

Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3797(a) (1)-(11) -----	7701(a) (1)-(11)
3797(a) (12) -----	7701(a) (13)
3797(a) (13) -----	Omitted
3797(a) (14)-(20) -----	1465, 7701(a) (14)-(20)
3797(b) -----	7701(b)
3797(c) -----	7701(c)
3798 -----	7507
3799 -----	77
3800 -----	7402(a)
3801 -----	1311-1314
3802 -----	7511
3803 -----	7852(a)
3804(a) -----	7508(a)
3804(b), (c) -----	Omitted
3804(d) -----	7508(b)
3804(e) -----	Omitted
3804(f) -----	7508(a)
3805 -----	6072(e)
3806 -----	1481
3808 -----	Omitted
3809(a) -----	7206(1)
3809(b) -----	6061, 6064
3809(c) -----	6065(a)
3810 -----	Omitted
3811 -----	7651
3812 -----	6521
3813 -----	503
3814 -----	504
3900 -----	7802
3901(a) -----	6801(a), 7805(c)
3901(b) -----	7803(b) (2)
3905 -----	Omitted
3906 -----	Omitted
3910 -----	Omitted
3911 -----	Omitted
3915 -----	Omitted
3916 -----	Omitted
3920 -----	7803(a)
3921 -----	7803(a)
3930(a) -----	7801(b)
3930(b) -----	Omitted
3931 -----	7801(b)
3932 -----	7801(c)
3940 -----	Omitted
3941 -----	Omitted
3942 -----	Omitted
3943 -----	7803(c), 7101
3944 -----	Omitted

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Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.
3950	Omitted	4011	Omitted
3951	Omitted	4012	Omitted
3952	Omitted	4013(a)	5241
3953	Omitted	4013(b)-(d)	Omitted
3954	Omitted	4014	Omitted
3955	Omitted	4015	Omitted
3960	Omitted	4016	Omitted
3961	Omitted	4017	Omitted
3962	Omitted	4018	Omitted
3963	Omitted	4019	Omitted
3964	Omitted	4020	Omitted
3965	Omitted	4021	Omitted
3966	Omitted	4022	Omitted
3967	Omitted	4030	Omitted
3970	7808	4031	Omitted
3971(a)	7809(a)	4032	Omitted
3971(b)	7809(b)	4033	Omitted
3971(b) (1)	7809(b) (1)	4040	7803(b) (1)
3971(b) (2)	7809(b) (2)	4041(a)	7803(a)
3971(b) (3)	7809(b) (3)	4041(b)	Omitted
3975	7803(d)	4042	7402(c)
3976	7803(d)	4043	Omitted
3977	7803(d)	4044	Omitted
3978	7803(d)	4045	Omitted
3990	Omitted	4046	Omitted
3991	Omitted	4047(a) (1)	7213(b)
3992	7101, 7402(d), 7803(c)	4047(b)	7214(b)
3993	Omitted	4047(c), (d)	Omitted
3994	Omitted	4047(e)	7214(a)
3995(c)	7402(d)	4048	7344
3996	Omitted	5000	8001
3997	Omitted	5001	8002
4000	7803(a)	5002	8003
4001	Omitted	5003	8004
4002	Omitted	5004	8005
4003	Omitted	5010	8021
4010	7101, 7803(c)	5011	8022
		5012	8023

TABLE II

This Table lists the sections of the Internal Revenue Code of 1954, (present 26 U.S.C.A.) and indicates the sections of the Internal Revenue Code of 1939, as amended (former 26 U.S.C.A.), which cover similar subject matter.

Citations to "R. A." refer to the sections of earlier Revenue Acts.

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
1 -----	11, 12(b) (3). (c), (f)	111 -----	22(b) (12)
2 -----	12(d)	112 -----	22(b) (13)
3 -----	400	113 -----	22(b) (14)
4 -----	23(aa) (4), 401, 402, 404	114 -----	22(b) (16)
5 -----		115 -----	22(b) (8), 116(d), (e)
11 -----	13, 15, 104(b), 261	116 -----	
12 -----		117 -----	
21 -----	108	118 -----	
31 -----	35, 322(a) (4)	119 -----	
32 -----	32	120 -----	
33 -----	31	121 -----	116(i)
34 -----		141 -----	23(aa) (1)
35 -----	25	142 -----	23(aa) (4), (5), 213(d)
36 -----	23(aa) (2)	143 -----	23(aa) (6)
37 -----		144 -----	23(aa) (3), (7)
38 -----	22(a)	145 -----	
61 -----		151 -----	25(b) (1)
62 -----	22(n)	152 -----	25(b) (3)
63 -----	21	153 -----	25(b) (2)
71 -----	22(k)	154 -----	
72 -----	22(b) (2)	161 -----	23
73 -----	22(m)	162 -----	23(a) (1)
74 -----		163 -----	23(b)
75 -----	22(o)	164 -----	23(c), (d)
76 -----	22(j), 3799	165 -----	23(e), (f), (g) (1), (2), (3), (4), (h), (i), (k) (2)
77 -----	123	166 -----	23(k)
101 -----	22(b) (1)	167 -----	23(l), 23(n), 114(a)
102 -----	22(b) (3)	168 -----	23(t), 124A
103 -----	22(b) (4)	169 -----	23(t), 124B
104 -----	22(b) (5)	170 -----	23(o), (q), 120
105 -----		171 -----	23(v), 125
106 -----		172 -----	23(s), 122
107 -----	22(b) (6)	173 -----	23(bb)
108 -----	22(b) (9), (10)	174 -----	
109 -----	22(b) (11)		
110 -----			

TABLE II

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
175	-----	341	-----117(m)
211	-----23	342	-----115(c)
212	-----23(a) (2)	346	-----115(i)
213	-----23(x)	351	-----112(b) (5), (c), (e)
214	-----	354	-----112(b) (3)
215	-----23(u)	355	-----112(b) (3), (11)
216	-----23(z)	356	-----112(c), (e)
217	-----	357	-----112(k)
241	-----26	358	-----113(a) (6), (23)
242	-----26(a)	361	-----112(b) (4), (d), (e)
243	-----26(b) (1)	362	-----113(a) (7), (8)
244	-----26(b) (2)	363	-----
245	-----26(b) (3)	367	-----112(l)
246	-----26(b)	368	-----112(g) (1), (2), (h)
247	-----26(h)	371	-----112(b) (10), (c), (d), (e), (k), (l)
248	-----	372	-----113(a) (22)
261	-----24(a)	373	-----112(b) (9), 113(a) (20), (21)
262	-----24(a) (1)	381	-----
263	-----23(a) (1) (C), 24(a) (2), (3)	382	-----
264	-----24(a) (4), (6)	391	-----
265	-----23(b), 24(a) (5)	392	-----
266	-----24(a) (7)	393	-----
267	-----24(b), (c)	394	-----
268	-----24(f)	395	-----
269	-----129	401	-----165(a)
270	-----130	402	-----165(b), (c), (d)
271	-----23(k) (6)	403	-----22(b) (2) (B)
272	-----	404	-----23(p)
273	-----24(d)	421	-----130A
301	-----22(e), 115(a), (b), (d), (e), (j)	441	-----41, 48(a), (b)
302	-----115(c), (g) (1), (i)	442	-----46
303	-----115(g) (3)	443	-----47(a), (c), (e), (g), 146(a)
304	-----115(g) (2)	446	-----41
305	-----115(f)	451	-----42(a)
306	-----	452	-----
307	-----113(a) (19)	453	-----44
311	-----	454	-----42(b), (c), (d)
312	-----115(c), (h), (l), (m), 394(d)	461	-----43
316	-----115(a), (b)	462	-----
317	-----	471	-----22(c)
318	-----	472	-----22(d) (1)-(5)
331	-----115(c)	481	-----
332	-----112(b) (6)	482	-----45
333	-----112(b) (7)	501	-----101 except (12) and last par., 165(a), 421
334	-----113(a) (15), (18)	502	-----Last par. 101
336	-----	503	-----3813
337	-----		
338	-----		

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
504	3814
511	421
512	421(c), (d), 422
513	422(b)
514	423
515	424
521	101(12) (A)
522	101(12) (B)
526	116(g)
531	102(a)
532	102(a)
533	102(b), (c)
534	
535	26(d), 27(b) (2), 102(d)
536	102(f)
537	
541	500
542	501
543	502, 507(b)
544	503
545	26(c), (d), 504, 505
546	505(e)
547	506
551	337
552	331
553	332
554	333
555	334
556	26(c), 335, 336
557	336(d)
561	26(f), 27(a)
562	26(f), 27(b)-(l)
563	504(c)
564	26(f), 27(c)-(l)
565	26(g), 28
581	104(a)
582	23(k) (2), 117(l)
583	121
584	169, second sen- tence of 170
591	23(r)
592	23(dd)
593	23(k)
594	110
601	26(d)
611	23(m)
612	114(b) (1)
613	114(b) (3), (4)
614	23(ff)
615	

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
616	23(cc)
621	22(b) (15)
631	117(k)
632	105
641	161
642	162(a), (e), (f), 163, 168, 170, 172
643	162(d)
651	162(b)
652	162(b), 164
661	162(b), (c)
662	162(b), (c), 164
663	162(d)
665	
666	
667	
668	
671	
672	
673	
674	
675	
676	168
677	167
678	
681	162(g)
682	171
683	
691	126
692	154
701	181
702	182, 183, 184, 186, 189
703	183, 189
704	191
705	
706	188
707	
708	
721	
722	
723	113(a) (13)
731	
732	113(a) (13)
733	
734	
735	
736	
741	

TABLE II

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
742	-----	893	-----116(h)
743	-----	894	-----22(b) (7)
751	-----	901	-----131(a), (g)
752	-----	902	-----131(f) (1), (2)
753	-----	903	-----131(h)
754	-----	904	-----131(b) (1)
755	-----	905	-----131(c), (d), (e)
761	-----3797(a) (2)	911	-----116(a)
771	-----	912	-----116(j), (k)
801	-----201(b)	921	-----109
802	-----201(a) (1)	922	-----26(i)
803	-----201(c) (1)-(7), (d), (e), (f)	931	-----251
804	-----202(b)	932	-----252
805	-----203A(b), (c), (d)	933	-----116(l)
806	-----202(c)	941	-----262
807	-----201(a) (2), (3)	942	-----263
821	-----207(a)	943	-----116(f), 265
822	-----207(a) (5), (b) (1), (4), (c), (d), (e), (f)	1001	-----111
823	-----207(b) (2), (3)	1002	-----112(a)
831	-----204(a)	1011	-----113(b), except (1)- (4)
832	-----204(a) (2), (b)-(f)	1012	-----113(a)
841	-----205	1013	-----113(a) (1)
842	-----206	1014	-----113(a) (5)
851	-----361	1015	-----113(a) (2), (3), (4)
852	-----362(a), (b) (1)-(7)	1016	-----113(b) (1), (2)
853	-----	1017	-----113(b) (3)
854	-----	1018	-----113(b) (4)
855	-----362(b) (8)	1019	-----113(c)
861	-----119(a), (b), (e)	1020	-----113(d)
862	-----119(c), (d), (e)	1021	-----
863	-----119(e)	1022	-----113(e)
864	-----119(f)	1031	-----112(b) (1), (c) (1), (e), 113(a) (6)
871	-----211(a), (b), (c)	1032	-----
872	-----212	1033	-----112(f), 113(a) (9)
873	-----213, 214	1034	-----112(n)
874	-----215, 216	1035	-----
875	-----219	1036	-----112(b) (2)
876	-----220	1051	-----113(a) (11)
877	-----221	1052	-----113(a) (12), (16)
881	-----231(a)	1053	-----113(a) (14)
882	-----231(b), (c), 232(a), (b), 233, 234, 235(a)	1054	-----
883	-----231(d)	1071	-----112(m)
884	-----236(b), 237, 238	1081	-----112(b) (8), 371
891	-----103	1082	-----372, 113(a) (17)
892	-----116(c)	1083	-----373
		1091	-----113(a) (10), 118
		1201	-----117(c)
		1202	-----23(ee), 117(b)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
1211	117(d)
1212	117(e)
1221	117(a) (1)
1222	117(a) (2)-(10)
1223	117(h)
1231	117(j)
1232	117(l)
1233	117(l), (g) (1)
1234	117(g) (2)
1235	
1236	117(n)
1237	
1238	117(g) (3)
1239	117(o)
1240	117(p)
1241	
1301	107(a)
1302	107(b)
1303	107(d)
1304	107(c), (e)
1311	3801(b)
1312	3801(b)
1313	3801(a)
1314	3801(c), (d), (e), (f), (g)
1315	
1321	22(d) (6)
1331	127(c) (1)
1332	127(c) (2)
1333	127(c) (3)
1334	127(c) (4)
1335	127(c) (5)
1336	127(d)
1337	127(c), (f)
1341	
1346	128
1347	106
1351	
1361	
1401	480
1402	481
1403	482
1441	143(b)
1442	144
1443	143(h)
1451	143(a)
1461	143(c)
1462	143(d)
1463	143(e)
1464	143(f)
1465	3797(a) (16)

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
1471	650, 651
1481	3806
1491	1250
1492	1251
1493	1252
1494	1253
1501	141(a)
1502	141(b)
1503	141(c)
1504	141(d), (e), (f), (g)
1505	141(h), (i)
1551	15(c)
1552	
2001	800, 810, 935
2002	822(b)
2011	810, 813(b)
2012	813(a) (2), 936(b)
2013	812(c)
2014	813(c), 936(c)
2015	927
2016	874(b) (3)
2031	811 (opening par.), 811(k)
2032	811(j)
2033	811(a)
2034	811(b)
2035	811(c) (1) (A), 811(l)
2036	811(c) (1) (B)
2037	811(c) (1) (C), (c) (2), (3)
2038	811(d)
2039	
2040	811(e)
2041	811(f), 403(d) (2) R.A.1942; 2, P. L. 635 (80th Cong.)
2042	811(g)
2043	811(i), 812(b)
2044	811(h)
2051	812
2052	935(c)
2053	812(b)
2054	812(b)
2055	812(d)
2056	812(e)
2101	800, 860, 935
2102	861(a) (2)
2103	861(a)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
2104	862	3307	1608
2105	863	3308	1611
2106	861	3401	1621
2201	939	3402	1622(a)-(d), (g)-(k)
2202	850	3403	1623
2203	930(a)	3404	1624
2204	825(a)	3501	1420(a), 1530(a), 1605(a)
2205	826(b)	3502	1402, 1503, 1512, 1622(e)
2206	826(c)	3503	1422, 1531
2207	826(d)	3504	1632
2501	1000(a)	4001	1650, 2400
2502	1001(a), (b), 1008(a), 1030(a)	4002	2412(a)
2503	1003(a), 1003(b)	4003	2400, 2412(b)
2504		4011	1650, 2401
2511	1000(b), 1030(b)	4012	2401, 2412(a)
2512	1002, 1005	4013	2412(b)
2513	1000(f)	4021	1650, 2402(a)
2514	1000(c), 452(b) (2) R A.1942, 2 P.L. 635 (80th Cong.)	4022	2402(a), (b)
2515		4031	1651(a)
2516		4041	2450
2521	1004(a) (1)	4042	
2522	1004(a) (2), (b)	4051	2403(c)
2523	1004(a) (3)	4052	2404
2524	1004(c)	4053	2405
3101	1400	4054	2413
3102	1401(a), (b)	4055	2406, 2453
3111	1410	4056	2406
3112	1412	4057	
3121	1420(a)-(e), (g)-(i)	4061	3403(a), (b), (c)
3122	1420(e)	4062	
3123	1427	4063	3403(c), (d)
3124	1428	4071	3400(a)
3125	1432	4072	3400(c)
3201	1500	4073	3400(a)
3202	1501(a), (b)	4081	3412(a)
3211	1510	4082	3412(b), 3412(c)
3212	1511	4083	3412(a)
3221	1520	4091	3413
3231	1532(a)-(e), (g), (h)	4092	3413
3232	1534	4093	3413
3233	1538	4101	3412(d)
3301	1600	4102	3412(e)
3302	1601(a), (b), (c)	4111	3405
3303	1602	4112	3405
3304	1603	4113	3405(b)
3305	1606	4121	3406(a) (3)
3306	1607(a)-(j), (l)-(o)	4131	3406(a)
		4141	3404(a)
		4142	3404(b)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
4143 -----	3404(a), 3404(b)	4291 -----	1715(a), 1851,
4151 -----	3404(d)		3467(b), 3469(d),
4152 -----	3404(d)		3475(c)
4161 -----	3406(a) (1)	4292 -----	3466(a), 3469(f),
4171 -----	3406(a) (4)		3475(b) (1)
4172 -----	3406(a) (4)	4293 -----	307 R.A. 1943
4173 -----	3406(a) (4)	4294 -----	
4181 -----	2700(a), 3407	4301 -----	1800, 1802(a)
4182 -----	2700(b) (2), 3407,	4302 -----	1802(a)
	706, P.L. 911	4303 -----	1808(g)
	(81st Cong.)	4304 -----	1802(a)
4191 -----	3406(a) (6)	4305 -----	
4192 -----	3406(a) (6)	4311 -----	1800, 1801
4201 -----	3408(a)	4312 -----	1801
4211 -----	3409(a)	4313 -----	1801
4216 -----	2701, 3441	4314 -----	1801
4217 -----	3440	4315 -----	1801
4218 -----	3444	4316 -----	
4219 -----	3445	4321 -----	1800, 1802(b)
4220 -----	3442	4322 -----	1802(b)
4221 -----	3406(b), 3408(b)	4323 -----	1802(b)
4222 -----	2456, 3451	4324 -----	
4223 -----	3446	4331 -----	3480, 3481(a)
4224 -----	2700(b), 3407,	4332 -----	3481(a)
	3442(3)	4333 -----	
4225 -----	2705	4341 -----	1802(b), 3481(a)
4226 -----		4342 -----	1802(b), 3481(a)
4231 -----	1700	4343 -----	1802(c), 3481(b)
4232 -----	1700(e), 1704	4344 -----	1802(b), 3481
4233 -----	1701	4345 -----	
4234 -----	1702, 1703	4351 -----	1802(b), 3481(a)
4241 -----	1710	4352 -----	1802(b), 3481(a)
4242 -----	1712	4353 -----	1802(b), 3481(a)
4243 -----	1711	4354 -----	
4251 -----	3465	4361 -----	3480, 3482
4252 -----	3465	4362 -----	3482
4253 -----	3465, 3466(b), (c)	4363 -----	
4254 -----	3465	4371 -----	1804(a)-(c)
4261 -----	3469	4372 -----	1804(a)-(d)
4262 -----	3469(a), (b), (f)	4373 -----	1804, 1808(b)
4271 -----	3475(a), (c)	4374 -----	1821(b) (3)
4272 -----	3475(a), (b)	4375 -----	
4273 -----	3475(e)	4381 -----	1801, 1802(a), (b)
4281 -----	3460(a)	4382 -----	1808(a)-(f), except
4282 -----	3460(b)		(b), 3483
4283 -----	3460(c)	4383 -----	1809(a)
4286 -----	1850	4401 -----	3285(a), (c), (d)
4287 -----	1857	4402 -----	3285(e)
		4403 -----	3287
		4404 -----	3285(f)
		4405 -----	

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Present		Former		Present		Former	
26 U.S.C.A.		26 U.S.C.A.		26 U.S.C.A.		26 U.S.C.A.	
1954 Code		1939 Code		1954 Code		1939 Code	
Sec.		Sec.		Sec.		Sec.	
4411	-----	3290		4596	-----	2302(e)	
4412	-----	3291		4597	-----	2303(c)	
4413	-----	3292		4601	-----	2493, 3430	
4414	-----			4602	-----	2492	
4421	-----	3285(b)		4603	-----		
4422	-----	3297		4701	-----	2550(a), (b)	
4423	-----	3298		4702	-----	2551(a), (b), (c)	
4451	-----	1807		4703	-----	2552(a)	
4452	-----	1831(a)		4704	-----	2553	
4453	-----	1830		4705	-----	2554	
4454	-----	1809(a)		4706	-----	2558(a), (c)	
4455	-----	1831(b)		4707	-----		
4456	-----	1832		4711	-----	2567(a)	
4457	-----			4712	-----	2567(b), 2568	
4461	-----	3267(a)		4713	-----	2569	
4462	-----	3267(b)		4714	-----	2571	
4463	-----	3267(c)		4715	-----		
4471	-----	1650, 3268(a)		4721	-----	3220	
4472	-----	3268(a)		4722	-----	3221	
4473	-----	3268(a)		4723	-----	2553(a)	
4474	-----			4724	-----	3224	
4501	-----	3490(a), 3491(a), 3500, 3508		4725	-----	3227(a)	
4502	-----	3492, 3507		4726	-----		
4503	-----	3490(b)		4731	-----	3228	
4504	-----	3501		4732	-----	2555	
4511	-----	2470(a) (1), (2)		4733	-----	2558(b)	
4512	-----	2477		4734	-----	2561	
4513	-----	2470(a) (2), (b), 2474		4735	-----	2564	
4514	-----			4736	-----	2562	
4521	-----	3420, 3422		4741	-----	2590(a), (b)	
4531	-----	3420, 3423		4742	-----	2591	
4532	-----	3423		4743	-----	2592(a)	
4541	-----	3420, 3425		4744	-----	2593	
4542	-----	3425		4745	-----	2598	
4551	-----	3420, 3424		4746	-----		
4552	-----	3424		4751	-----	3230(a)	
4553	-----	3424(a)		4752	-----	3230(b), (c), (d)	
4561	-----	2490, 2491(a)		4753	-----	3231	
4562	-----	2491(a)		4754	-----	3233	
4571	-----	2490, 2491(b), (d)		4755	-----	3234	
4572	-----	2491(f)		4756	-----	2601, 3237	
4581	-----	2490, 2491(c)		4757	-----		
4582	-----	2491(c), (g), 2492		4761	-----	3238	
4591	-----	2306, 2311(a)		4762	-----	2603	
4592	-----	2300		4771	-----	2550(c) (1), (2), 2552(b), 2590(c), 2592(b)	
4593	-----	2300, 2307		4772	-----	3222, 3232	
4594	-----	2302		4773	-----	2556, 2595	
4595	-----	2303, 2404		4774	-----	2563, 2602	

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
4775 -----	3226, 3236
4776 -----	
4801 -----	2651(a), (b)
4802 -----	2650
4803 -----	2651(c), 2659(a)
4804 -----	2653
4805 -----	2654, 2655
4806 -----	
4811 -----	2321(a), (b)
4812 -----	2306, 2327(a)
4813 -----	2305, 2321(c), 2327(a), (d)
4814 -----	2322(b)-(e)
4815 -----	2323(c), 2324
4816 -----	2307, 2327(a)
4817 -----	2325
4818 -----	2311, 2327(a)
4819 -----	
4821 -----	3206
4822 -----	3208
4826 -----	2320, 2322(a), 2323(a), (b), 3208
4831 -----	2351(a), (b), 2356
4832 -----	2351(c), 2355, 2356, 2361
4833 -----	2352(b)-(e)
4834 -----	2353(b), 2354(b), (c)
4835 -----	2360
4836 -----	
4841 -----	3210
4842 -----	3212
4846 -----	2350, 2352(a), 2353(a), 2354(a)
4851 -----	1920(a), (b)
4852 -----	1931(a)
4853 -----	1925
4854 -----	1926
4861 -----	1921
4862 -----	1927
4863 -----	1922
4864 -----	1923
4865 -----	1924
4871 -----	1920(c)
4872 -----	1928
4873 -----	1932
4874 -----	1930
4875 -----	1935

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
4876 -----	1933
4877 -----	
4881 -----	1900
4882 -----	1905
4883 -----	1901, 1906
4884 -----	1902
4885 -----	1903
4886 -----	
4891 -----	1805
4892 -----	1805
4893 -----	1809(a)
4894 -----	1805
4895 -----	1805
4896 -----	1805
4897 -----	
4901 -----	3271
4902 -----	3277
4903 -----	3278
4904 -----	3279
4905 -----	3280
4906 -----	3276
4907 -----	3283, 3292
5001 -----	2800(a) (1), (4), (5), (c), 3030(a) (1), 3111, 3125(a), 3182(b)
5002 -----	2809(a), (b) (1), (2), (c), (d)
5003 -----	
5004 -----	2800(c) (1), (2), (3), (4), 3112
5005 -----	2800(a) (1), (d), 3112
5006 -----	2800(a) (1), (b) (2), (f), 2879(b), 2880, 2900(a)
5007 -----	2800(a) (3), (4), (f), 2846(a), 2847(a), 3112(b), 3125(a)
5008 -----	2803(a)-(e), 2903(b)-(e)
5009 -----	2802, 2885, 2878
5010 -----	2802(a), (b), 2866
5011 -----	2891(b), 2901(a), (b), (c), (d), 3113
5012 -----	2887
5021 -----	2800(a) (5), 2801(b)
5022 -----	3030(a) (2)
5023 -----	2801(e) (5)
5024 -----	

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
5025 -----	2800(a) (5), 2801 (c) (2), (e), 2883 (e), 3036(a), 3250(h), (i), 3254(g)	5122 -----	3250(b) (2), 3254(c) (1), (f)
5026 -----	2800(a) (1) (A)	5123 -----	3250(e) (4), 3251(c), 3255
5027 -----	2802(c)	5124 -----	3252(a), (b), (c)
5028 -----		5131 -----	3250(l) (1), (2)
5041 -----	3030(a) (1), (2)	5132 -----	3250(l) (3)
5042 -----	3030(a) (1)	5133 -----	3250(l) (4)
5043 -----	3030(b), 3041	5134 -----	3250(l) (5)
5044 -----		5141 -----	3270
5045 -----		5142 -----	3271(a), (b), (c)
5051 -----	3150(a), (c)	5143 -----	3272(a)
5052 -----	3160, 3254	5144 -----	3277, 3278, 3279, 3280(a), 3283
5053 -----	3153(b), (c)	5145 -----	3273(a)
5054 -----	3150(b) (1)	5146 -----	3273(b)
5055 -----	3150(b) (2), 3157 (a)	5147 -----	3275(a)
5056 -----		5148 -----	3276
5057 -----		5149 -----	3282
5061 -----	3172(a)	5171 -----	2819
5062 -----	3179(a), (b)	5172 -----	2832
5063 -----	1656(a), (b), (c)	5173 -----	2820(a), 2822, 2823
5064 -----	3174	5174 -----	2810
5065 -----		5175 -----	2812
5081 -----	3250(f) (1)	5176 -----	2814(a) (1), (a) (2)
5082 -----	3254(g)	5177 -----	2814(a) (1), 2815 (a), (b) (1) (A), (B), (C), (D)
5083 -----		5178 -----	2816
5084 -----		5179 -----	2817(a), (b)
5091 -----	3250(c) (1), (d) (3)	5180 -----	2831
5092 -----	3254(d)	5191 -----	2840, 2850(a)
5093 -----		5192 -----	2820, 2838, 2877, 3042
5101 -----	3250(j) (1)	5193 -----	2820, 2878(a), (b), (c), (d)
5102 -----	3254(h)	5194 -----	2883(a)-(g), 2916
5103 -----		5195 -----	2836, 2870
5104 -----	3271(c) (1)	5196 -----	2826, 2827, 2828, 2830, 2839
5105 -----	2818(a)	5197 -----	2841, 2844, 2859
5106 -----	3250(j) (3)	5211 -----	2804
5111 -----	3250(a) (1), (3), (d) (1), (2), 3254(c) (2)	5212 -----	2808
5112 -----	3254(b), (e)	5213 -----	2811
5113 -----	3250(a) (4), (d) (3), (g), 3251(a), (b)	5214 -----	2871
5114 -----	2857, 2858	5215 -----	2825
5115 -----	2863	5216 -----	2834
5116 -----	2831	5217 -----	3183(a), (b), (c)
5121 -----	3250(b) (1), (b) (4), (e) (1), (2), (3)	5231 -----	2872, 2873, 2875

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
5232 -----	2879(c), (d)
5233 -----	
5241 -----	2872, 2873, 2915, 4013(a)
5242 -----	2879(a)
5243 -----	2903(a), (f), (g), 2904, 2905, 2910, 2911
5244 -----	2882
5245 -----	2881
5246 -----	2875
5247 -----	2885(a), (b), 2886, 2888
5248 -----	
5249 -----	
5250 -----	2884
5251 -----	
5252 -----	2874
5271 -----	2812
5272 -----	2801(e) (1)
5273 -----	2801(e) (2)
5274 -----	2831
5275 -----	
5281 -----	2801(e) (1), (d)
5282 -----	2813, 2861, 2862
5283 -----	2828, 2830
5284 -----	
5285 -----	2855, 2857
5301 -----	3100
5302 -----	3101
5303 -----	3102
5304 -----	3114
5305 -----	3105
5306 -----	3103
5307 -----	3106
5308 -----	3107
5309 -----	3104
5310 -----	3108(a)-(d), 3109, 3125(b)
5311 -----	3125(a)
5312 -----	
5313 -----	3121(a), (c)
5314 -----	3117
5315 -----	3119
5316 -----	3120
5317 -----	3121(d), 3122
5318 -----	3123
5319 -----	3124
5320 -----	
5331 -----	3070(a), (b)
5332 -----	3073

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
5333 -----	3074
5334 -----	
5351 -----	3040
5352 -----	
5353 -----	
5354 -----	3031(a), 3040
5355 -----	
5356 -----	3040
5357 -----	
5361 -----	
5362 -----	3030(a) (1), 3031(a), 3037, 3038, 19 U.S.C. A. 81(c), 1809, 1311
5363 -----	
5364 -----	
5365 -----	
5366 -----	3034, 3035, 3042
5367 -----	3171
5368 -----	3030(a) (1), 3040, 3041
5369 -----	3040
5370 -----	3039
5371 -----	
5372 -----	
5373 -----	3031, 3032, 3033, 3036, 3037(a)
5381 -----	3036, 3044(a), 3045
5382 -----	3032, 3036, 3044, 3045
5383 -----	3036, 3044(b), (c)
5384 -----	3045
5385 -----	3043(a)
5386 -----	2801(e) (3), (4)
5387 -----	3254(g)
5388 -----	
5391 -----	2801(e), (e) (3), 3031(a)
5392 -----	3036, 3044(b), 3045
5401 -----	3153(b), 3155(a), (b)
5402 -----	3158, 3254(d)
5403 -----	
5411 -----	3158
5412 -----	3104, 3155(f)
5413 -----	3155(f)
5414 -----	
5415 -----	3155(c)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
5416	-----	5636	2866
5501	-----	5637	2868
5502	3110	5638	2869
5511	3182(a)	5639	2806(d)
5512	-----	5640	2803(f)
5521	3177	5641	2871
5522	2891(a)	5642	2803(g)
5523	3178	5643	2908
5551	2815(c), (d), (e)	5644	2909
5552	2829	5645	2806(h) (1)
5553	-----	5646	2806(e)
5554	-----	5647	3072
5555	3171	5648	2885(d)
5556	3176	5649	2854
5557	3175	5650	2850
5601	2810	5661	3043
5602	2818	5662	-----
5603	2812	5663	-----
5604	2814	5671	3159
5605	2815(a)	5672	3159
5606	2833	5673	3159
5607	2819	5674	3159
5608	2834	5675	3155(f)
5609	2811	5676	3159(e), (f), (g), (h), (i)
5610	2843	5681	2831
5611	2842	5682	2821, 2851
5612	2838	5683	3173(a)
5613	2836	5684	3173(b)
5614	2870	5685	3173(c)
5615	2828	5686	3115, 3116
5616	2827	5687	2806(g)
5617	2826	5688	2805(a)-(b), 3118, 3173(d), 63 Stat. 377 et seq.
5618	2822	5689	2800(a) (1) (B), 3112(b), 3150(b) (3)
5619	2839	5690	3173(b) (4)
5620	2841	5691	3253
5621	2857(a), 2859	5692	3252
5622	2807	5693	3274
5623	2853	5701	2000
5624	2852	5702	2010, 2030, 2050, 2110
5625	2806(c)	5703	2001, 2002(b), (c), 2194, 3310(f) (2)
5626	2806(f)		
5627	2801(e) (2)		
5628	2801(f)		
5629	2850		
5630	2865		
5631	2876		
5632	2012, 2013		
5633	2914(a)		
5634	2806(a) (1), (2)		
5635	2867		

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
5704	2040, 2101, 2111(f), 2130(d), 2135(a) (1), (2), (3), 2197(b)	5763	2175, 2180(b), (g) (1), (h), (i), (k), (l) (1), (2)
5705	2137, 2198, 3313	5801	3260
5706	2136	5802	3261(a)
5707	2000(g) (1), (2), (3)	5803	3262
5711	2013, 2033, 2039(a), 2053	5811	2720
5712	2012, 2032, 2052	5812	2721
5713	2014, 2054	5813	2722
5721	2017, 2036	5814	2723
5722	2019, 2038, 2039(b), 2194	5821	2734
5723	2100, 2102, 2103(a) (1), 2111, 2112(a) (1), 2130(a), (b), (c)	5831	2700, 3407
5731	2050, 2060	5841	3261(b)
5732	2058	5842	2724
5741	2018, 2037, 2039(b) (1), 2056, 2194	5843	2725
5751	2104(a), 2113, 2170(a) (2)	5844	2727
5752	2103(c), 2112(e)	5845	2728
5753	2190	5846	2731
5761	2156(c), 2161(m) (1), 2180(l)	5847	2732
5762	2130(a), (b), (c), 2151(a), (c), 2155(a), 2156, 2160(a)-(e), (g), (i), 2161(a), (c), (c)-(g), 2162(a) (2)-(5), (b), 2170(a) (2), (4), (b), 2171(b) (1), (2), 2172, 2173(a), 2174, 2176(a) (2), (3), 2180(a), (d)-(f)	5848	2733
5763	2155(b), 2160(h), 2161(b), (h), (i) (1), (j) (1), (l) (1), (m) (2), 2170(b), 2171(a),	5851	2726(a)
		5852	2726(b)
		5853	2726(c)
		5854	3263
		5861	2729
		5862	2730
		6001	51, 54(a), (b), 821(d), 1007(a), (b), 1720, 1835, 1928(b), 2302, 2303, 2322(c), 2324, 2352, 2555, 2569(d), 2594(a), 2653(b), 2709, 2724, 3220(c), 3233(a), 3603
		6011(a)	47(a), 51, 143(c), 215(a), 217, 235, 251(g), 1420(c), 1530(b), 1604(a), 1624, 1700(c) (2), (d) (2), (e) (2), 1716(a), 1852(a), 1902(a) (1), 2403(a), 2451(a), 2471, 2701, 3272(a), 3310(a), (b), (f) (1), 3448(a), 3461,

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6011(a) -----	3467(b), 3469(d), 3475(c), 3491(a), 3611(a) (1)	6037 -----	
6011(b) -----		6041(a) -----	147(b) (2)
6012(a) -----	51(a), 52(a), 142(a) (2), (3), (4), 217(b), 235(b)	6041(b) -----	147(b) (1)
6012(b) (1) -----	51(b) (4), (c), (g) (5), 142(a) (1)	6041(c) -----	147(c)
6012(b) (2) -----	51(c), 58(f), 142(a)	6041(d) -----	
6012(b) (3) -----	52(a)	6042 -----	148(a), (b), (c)
6012(b) (4) -----	142(a)	6043 -----	148(d), (e)
6012(b) (5) -----	142(b)	6044(a) -----	148(f)
6013(a) -----	51(b) (1), (2), (3), (4), (5)	6044(b) -----	148(f)
6013(b) -----	51(g) (1)-(6)	6044(c) -----	148(f)
6014(a) -----	51(f) (1), (2), (4)	6045 -----	149
6014(b) -----	51(b) (1), 51(f) (3)	6046(a) -----	3604(a)
6015(a) -----	58(a)	6046(b) -----	3604(b)
6015(b) -----	58(c)	6046(c) -----	3604(b)
6015(c) -----	58(b)	6046(d) -----	
6015(d) -----	58(b)	6051(a) -----	1403, 1633(a), (b)
6015(e) -----	58(d) (2)	6051(b) -----	1633(a)
6015(f) -----	58(d) (3)	6051(c) -----	1633(b)
6015(g) -----	60(b)	6051(d) -----	1633(b)
6015(h) -----	58(a)	6061 -----	3809(b)
6016 -----		6062 -----	52(a)
6017 -----	482(a)	6063 -----	187
6018(a) -----	821(a) (1), 864(a) (1), 937	6064 -----	58(g), 3809(b)
6018(b) -----	821(a) (2), 864(a) (2)	6065(a) -----	142(a), (b), 148(a), (d), (e), 149, 169(f), 187, 233, 821(a), 864(a), 1006(a), 1604(a), 1716(a), 1852(a), 1902(a) (1), 2403(a), 2471, 2555(a), (c), 2701, 3233(a), 3272(a), 3330, 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3604(b), 3611(a), (c), 3779(b), 3780(a), 3809(c)
6019(a) -----	1006(a)		
6019(b) -----		6065(b) -----	51(a), 54(f), 58(b), 215(a), 3780(a)
6020(a) -----	3611(a) (2)	6071 -----	141(b), 147(a), 148(a), (b), (c), (e), 149, 150, 153(a), (b), 821(b), 864(b), 874(b) (3), 1253(a), 1420(c), 1530(b), 1604(a),
6020(b) -----	3612(a), (c)		
6020(c) -----			
6021 -----	3613		
6031 -----	187		
6032 -----	169(f)		
6033(a) -----	54(f)		
6033(b) -----	153(a)		
6033(c) -----			
6034(a) -----	153(b)		
6034(b) -----	153(b)		
6035(a) -----	338		
6035(b) -----	339		
6036 -----	274(a), 820		

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6071 -----	1716(b), 1852(a), 1902(a) (1), 2403(a), 2451(a), 2471, 2555(b), (c), 2701, 2734(e), 3233(a), 3272(a), 3310(a), (f) (1), 3448(a), 3461, 3467(b), 3469(d), 3475 (c), 3491(a), 3604(a), 3611(b), (c), 3779(b), 3780(a), 3791(a)	6081(b) ----- 6081(c) ----- 6091(a) -----	147(a), 148(b), (c), (d), 149, 150, 153(a), (b), 820, 874(b) (3), 1253(a), 1420(c), 1530(b), 2555(c) (1), 2734(e), 3233(a), 3604(a), 3611(a) (1), (c), 3779(a), 3780(a), 3791(a)
6072(a) -----	53(a) (1), 143(c)	6091(b) (1) -----	53(b) (1), 58(d) (2), 60(b), 143(c), 821(c), 864(c), 1006(b), 1604(a), 1716(c), 1852(b), 1902(a) (2), 2403(a), 2451(a), 2471, 2701, 3272(a), 3291(a), 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3491(c), 3611(a) (1), (c), 3791(a)
6072(b) -----	53(a)		
6072(c) -----	217(a), 235(a)		
6072(d) -----			
6072(e) -----	3805		
6073(a) -----	58(d) (1)		
6073(b) -----	60(a)		
6073(c) -----	58(d) (2)		
6073(d) -----	60(b)		
6073(e) -----	60(c)		
6074(a) -----			
6074(b) -----			
6074(c) -----			
6075(a) -----	821(h), 864(b)		
6075(b) -----	1006(b)		
6081(a) -----	53(a) (2), 58(e), 141(b), 147(a), 148(a), (b), (c), (e), 149, 150, 153(a), (b), 821(b), 864(b), 874(b) (3), 1253(a), 1420(c), 1530(b), 1604(b), 1625(c), 1633(c), 1716(b), 2403(a), 2451(a), 2471, 2555(c) (1), 2701, 3233(a), 3272(a), 3310(f) (1), 3448(a), 3461, 3467(b), 3469(e), 3475(d), 3611(a) (1), 3634, 3779(b), 3791(a)	6091(b) (2) -----	53(b) (2), 141(b), 143(c), 1604(a), 1716(c), 1852(b), 1902(a) (2), 2403(a), 2451(a), 2471, 2701, 3272(a), 3291(a), 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3491(c), 3611(a) (1), (c), 3791(a)
		6091(b) (3) -----	821(c), 864(c)
		6091(b) (4) -----	
		6101 -----	3630
		6102 -----	
		6103(a) -----	55(a)
		6103(b) -----	55(b)
		6103(c) -----	55(c)
		6103(d) -----	55(d)
		6103(e) -----	58(h)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6335(e) (2) -----	3695(b)
6335(e) (2) (A) -----	3695(a), 3701(d)
6335(e) (2) (B) -----	3701(d)
6335(e) (2) (C) -----	
6335(e) (2) (D) -----	3701(f)
6335(e) (2) (E) -----	3693, 3701
6335(e) (2) (F) -----	3693(d), 3701(f)
6335(e) (3) -----	3701(f)
6336 -----	
6337(a) -----	3696, 3702
6337(b) (1) -----	3702(b) (1)
6337(b) (2) -----	3702(b) (2)
6337(c) -----	3702(c)
6338(a) -----	3703(b)
6338(b) -----	3704(b)
6338(c) -----	3703(a), 3704(a)
6339(a) (1) -----	3697(a)
6339(a) (2) -----	3697(b)
6339(a) (3) -----	3697(c)
6339(a) (4) -----	3697(d)
6339(a) (5) -----	
6339(b) (1) -----	3704(c) (1)
6339(b) (2) -----	3704(c) (2)
6340(a) -----	3706(a), (b)
6340(b) -----	3706(f)
6341 -----	3716
6342(a) -----	3694
6342(b) -----	3712
6343 -----	
6344 -----	
6401(a) -----	3770(a) (2)
6401(b) -----	322(a) (2)
6401(c) -----	3770(c)
6402(a) -----	1027(a), 3770(a) (1), (4), (5)
6402(b) -----	322(a) (3)
6403 -----	321
6404(a) -----	3770(a) (1), (5)
6404(b) -----	273(j), 873, 1014
6404(c) -----	
6405(a) -----	3777(a)
6405(b) -----	3777(b)
6405(c) -----	3777(c)
6406 -----	3790
6407 -----	3770(a) (3)
6411(a) -----	3780(a)
6411(b) -----	3780(b)
6411(c) -----	3781
6412(a) -----	
6412(b) (1) -----	3412(g) (1)

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6412(b) (2) -----	3412(g) (2)
6412(c) -----	
6412(d) -----	3508
6412(e) -----	
6413(a) (1) -----	1401(c), 1411, 1501(c), 1521
6413(a) (2) -----	1411
6413(b) -----	1421, 1502, 1522
6413(c) (1) -----	1401(d) (3)
6413(c) (2) -----	1401(d) (4)
6413(d) -----	1601(d)
6414 -----	143(f), 1622(f) (1)
6415(a) -----	1854(a), 3471(a)
6415(b) -----	1715(d) (1), (2), 1854(b), (c), 3471(b), (c)
6415(c) -----	1715(d) (2)
6415(d) -----	1715(d) (1), 1854(c), 3471(c)
6416(a) -----	1715(d), 2407(b), 2452(b), 3443(a) (3) (B), (b), (d)
6416(b) (1) -----	2407(a), 3443(a) (2)
6416(b) (2) (A) -----	3443(a) (3) (A) (i)
6416(b) (2) (B) -----	3443(a) (3) (A) (ii)
6416(b) (2) (C) -----	3443(a) (3) (A) (iii)
6416(b) (2) (D) -----	2452(a)
6416(b) (2) (E) -----	3443(a) (3) (A) (iv)
6416(b) (2) (F) -----	3443(a) (3) (A) (v)
6416(b) (2) (G) -----	3443(a) (3) (A) (vi)
6416(b) (2) (H) -----	3443(a) (3) (A) (vii)
6416(b) (3) -----	3443(a) (1)
6416(c) -----	3403(e)
6416(d) -----	3408(b)
6416(e) -----	2705
6416(f) -----	2703(a), 3471(b)
6417(a) -----	2473
6417(b) -----	2474
6418(a) -----	3494(a)
6418(b) -----	3493(a)
6419 -----	3286
6420 -----	
6501(a) -----	275(a), 874(a), 1016(a), 1635(a), 3312(a)
6501(b) (1) -----	275(f)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6501(b) (2) -----	1635(e)
6501(b) (3) -----	
6501(c) (1) -----	276(a), 874(b) (1), 1016(b) (1), 1635(b), 3312(b)
6501(c) (2) -----	1635(e), 3312(c)
6501(c) (3) -----	276(a), 874(b) (1), 1016(b) (1), 1635(b), 3312(b)
6501(c) (4) -----	276(b)
6501(c) (5) -----	
6501(d) -----	275(b)
6501(e) (1) (A) -----	275(c)
6501(e) (1) (B) -----	275(d) (1)
6501(e) (2) -----	
6501(f) -----	
6501(g) -----	
6502(a) -----	276(c), 874(b) (2), 1016(b) (2), 1635(d), 3312(d)
6502(b) -----	3714(b)
6503(a) (1) -----	277, 875, 1017
6503(a) (2) -----	141(h)
6503(b) -----	274(b), 1015(b)
6503(c) -----	
6503(d) -----	822(a) (2), 871(h)
6503(e) -----	
6504 -----	
6511(a) -----	322(b) (1), 910, 1027(b) (1), 1636(a) (1), 3313
6511(b) (1) -----	322(b) (1), 910, 1027(b) (1), 1636(a) (1), 3313
6511(b) (2) -----	322(b) (2), 910, 1027(b) (2), 1636(a) (2), 3313
6511(c) -----	322(b) (3)
6511(d) (1) -----	322(b) (5)
6511(d) (2) (A) -----	322(b) (6)
6511(d) (2) (B) -----	322(g)
6511(d) (3) -----	
6511(e) (1) -----	3494(b)
6511(e) (2) -----	3493(b)
6511(f) -----	
6512(a) -----	322(c), 911, 1027(c)
6512(b) -----	322(d), 912, 1027(d)
6513(a) -----	322(b) (4)
6513(b) -----	322(e)

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6513(c) -----	1636(c)
6513(d) -----	
6514(a) -----	3774
6514(b) -----	3775
6515 -----	
6521 -----	3812
6531 -----	3748(a)
6532(a) (1) -----	3772(a) (2)
6532(a) (2) -----	3774(b)
6532(a) (3) -----	
6532(a) (4) -----	3772(a) (3)
6532(b) -----	3746(a), (b), (c)
6533 -----	
6601(a) -----	146(f), 292(a), (c), (d), 294(a) (1), (2), (b), (c), 295, 296, 297, 298, 890(a), (b), 891, 892, 893(a) (1), (2), (b) (1), (2), (3), (4), 925, 1020(a), (b), 1021, 1022, 1023(a) (1), (2), (b) (1), (2), (3), (4), (5), 1420(b), 1530(c), 1605 (b), 1717, 1853 (c), 2403(b), 2451(b), 2475, 2706, 3310(c), 3448(b), 3470, 3495, 3655(b), 3779(i), 3794
6601(b) -----	890(a), 925
6601(c) (1) -----	294(a) (2), 296, 893(a) (2), (b) (3), 1023(a) (2), (b) (3)
6601(c) (2) -----	56(b), 272(i), 1605(c)
6601(c) (3) -----	297, 892, 1022
6601(c) (4) -----	3310(a), (b), 3311
6601(d) -----	292(a), 891, 1021
6601(e) -----	292(c), 3779(i)
6601(f) (1) -----	292(a), 294(b), 295, 296, 298, 890(a), (b), 891, 893(a), (b), 1020(a), (b), 1021, 1023(a),

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6601(f) (1) -----	(b), 1420(b), 1530(c), 1605(b), 1717, 1853(c), 2403(b), 2451(b), 2475, 2706, 3310(c), (d), 3448(b), 3470, 3495, 3655(b), 3779(a)	6671(a) -----	1718(c), 1821(a) (3), 2557(b) (4), 2707(a)
6601(f) (2) -----		6671(b) -----	1718(d), 1821(a) (4), 2557(b) (8), 2707(d)
6601(f) (3) -----		6672 -----	1718(c), 1821(a) (3), 2557(b) (4), 2707(a)
6601(g) -----	59(d)	6673 -----	1117(g)
6601(h) -----		6674 -----	1626(b), 1634(b)
6602 -----	3746(d)	6801(a) -----	1809(b) (1), 2652(a), 3273 (a), 3300(a), 3901(a) (2)
6611(a) -----	3443(c), 3771(a)	6801(b) -----	1809(b) (1), 3301(a)
6611(b) (1) -----	3771(b) (1)	6802(1) -----	1423(a), 1817(a)
6611(b) (2) -----	3771(b) (2)	6802(2) -----	1817(b)
6611(c) -----	3771(c)	6802(3) -----	1817(c)
6611(d) -----	322(b) (4), (e)	6803(a) (1) -----	1423(b)
6611(e) -----	3771(b) (2)	6803(a) (2) -----	1423(c)
6611(f) -----	3771(e)	6803(b) (1) -----	1818(a)
6611(g) -----	3790	6803(b) (2) -----	1818(b)
6612 -----		6804 -----	1815, 1920(c), 3301(a)
6651(a) -----	291, 804(a), 1631, 3612(d) (1)	6805(a) -----	3304(a)
6651(b) -----		6805(b) -----	3304(b)
6651(c) -----	294(d) (1) (A)	6805(c) -----	3304(c)
6652 -----		6805(d) -----	3304(d)
6653(a) -----	293(a), 894(a), 1019(a)	6806(a) -----	3273(d)
6653(b) -----	293(b), 871(i), 1019(b), 3612(d) (2)	6806(b) -----	
6653(c) (1) -----	271, 870, 1011	6806(c) -----	3293
6653(c) (2) -----		6807 -----	3725
6653(d) -----		6808 -----	3300(c), 3301(b)
6653(e) -----	1821(a) (3)	6851(a) (1) -----	146(a) (1)
6654 -----	294(d) (1) (B)	6851(a) (2) -----	146(a) (2)
6655 -----		6851(b) -----	
6656 -----		6851(c) -----	146(d)
6657 -----		6851(d) -----	146(e)
6658 -----	146(f), 299	6851(e) -----	146(b)
6659 -----	51(g) (6), 291, 293, 871(i), 1019, 1117(g), 1634(b), 1718(c), 1821(a) (3), 3310(a)-(c), 3311, 3655(a) (b)	6861(a) -----	273(a), 872(a), 1013(a)
		6861(b) -----	273(b), 872(b), 1013(b)
		6861(c) -----	273(c), 872(c), 1013(c)

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
6861(d) -----	273(d), 872(d), 1013(d)
6861(e) -----	273(e), 872(e), 1013(e)
6861(f) -----	273(i), 872(i), 1013(i)
6861(g) -----	273(k), 872(j), 1013(j)
6861(h) -----	
6862(a) -----	3660(a)
6862(b) -----	
6863(a) -----	273(f), (h), 872 (f), (h), 1013(f), (h), 3660(b)
6863(b) (1) -----	273(g), 872(g), 1013(g)
6863(b) (2) -----	273(f), (h), 872 (f), (h), 1013(f), (h)
6864 -----	
6871(a) -----	274(a), 1015(a)
6871(b) -----	274(a), 1015(a)
6872 -----	274(a)
6873(a) -----	274(b), 1015(b)
6873(b) -----	
6901(a) -----	311(a), 900(a), 1025(a)
6901(b) -----	311(a), 900(a), 1025(a)
6901(c) -----	311(b), 900(b), 1025(b)
6901(d) -----	311(b) (4)
6901(e) -----	311(c), 1025(c)
6901(f) -----	311(d), 900(c), 1025(d)
6901(g) -----	311(e), 1025(g)
6901(h) -----	311(f), 900(e), 1025(f)
6901(i) -----	
6902(a) -----	1119(a)
6902(b) -----	1119(b)
6903(a) -----	312(a), (b), 901(a), (b), 1026(a), (b)
6903(b) -----	312(c), 901(c), 1026(c)
6904 -----	
7001(a) -----	150
7001(b) -----	
7011(a) -----	3270(a)
7011(b) -----	3280(a)

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
7012 -----	
7101 -----	44(d), 56(c) (2), 112(b) (8) (D), 131(c), 146(b), 272(j), 273(f), 822(a) (2), 871(h), 872(f), 926, 1012(i), 1013(f), 1145, 1818(a), 2302(e), 2322(e), 2352(e), 2474, 2569(b), 2653(d), 3360(d) (2) (B), 3412(d), 3413, 3660(b), 3722(c), 3724(c), 3943, 3992, 4010, and 6 U.S.C. 15
7102 -----	3676
7103 -----	
7121(a) -----	3760
7121(b) -----	3760
7122(a) -----	3761
7122(b) -----	3761
7123 -----	
7201 -----	145(a), (b), 153(d), 340, 894(b) (2) (B), (C), 1024(a), (b), 1718(a), (b), 1821(a) (1), (2), (b) (4), 2557(b) (2), (b) (3), 2656(f), 2707(b), 2707 (c), 3604(c)
7202 -----	145(b), 894(b) (2) (C), 1718(b), 1821(a) (2), 2557(b) (3), 2707(c)
7203 -----	145(a), 153(d), 340, 894(b) (2) (B), 937, 1024(a), 1718(a), 1821(a) (1),

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
7203 -----	2557(b) (2), 2707(b), 3604(c)	7237(a) -----	2557(b) (1), 2596, 3225, 3235
7204 -----	1634(a)	7237(b) -----	2557(a)
7205 -----	1626(d)	7238 -----	2570
7206(1) -----	3809(a)	7239(a) -----	2656(b)
7206(2) -----	3793(b)	7239(b) -----	2656(d)
7206(3) -----	3793(a)	7240 -----	3506
7206(4) -----	2656(a), 3321	7261 -----	2409
7206(5) -----	3762	7262 -----	3294(a)
7207 -----	894(b) (2), 3616(a), 3672, 3793(b)	7263(a) -----	1929(c)
7208 -----	3300(b)	7263(b) -----	1929(b)
7208(1) -----	1425(b)	7264 -----	3207(a)
7208(2) -----	1823(a)	7265(a) (1) -----	2308(b)
7208(3) -----	1822, 1823(b)	7265(a) (2) -----	2326(a) (2)
7208(4) -----	1823(c)	7265(b) -----	2308(e), 2327(a)
7208(5) -----	3323(a) (3)	7265(c) -----	2308(j), 2327(a)
7209 -----	1425(a)	7266(a) (1) -----	3211(a)
7210 -----	3616(b)	7266(a) (2) -----	3211(b)
7211 -----	3325	7266(a) (3) -----	3211(c)
7212(a) -----	3601(c)	7266(b) -----	2357(a)
7212(b) -----	3601(c) (2)	7266(c) -----	2357(c)
7213(a) (1) -----	55(f) (1)	7266(d) -----	2357(d)
7213(a) (2) -----	55(f) (2)	7266(e) -----	2357(e)
7213(a) (3) -----	55(f) (3)	7266(f) -----	2357(f)
7213(b) -----	4047(a) (1)	7267(a) -----	2656(j)
7213(c) -----		7267(b) -----	2656(k)
7214(a) -----	4047(e)	7267(c) -----	2656(l)
7214(b) -----	4047	7267(d) -----	2656(h)
7214(c) -----		7268 -----	3320(a)
7231 -----	150	7269 -----	894(b) (1)
7232 -----	3412(d)	7270 -----	1821(b) (3)
7233(1) -----	1929(a) (1)	7271(1) -----	1822, 2656(c)
7233(2) -----	1929(a) (2)	7271(2) -----	1820(b)
7234(a) -----	2308(a)	7271(3) -----	1820(a)
7234(b) -----	2308(c)	7271(4) -----	3323(a) (1), (2)
7234(c) -----	2308(h)	7272(a) -----	1831(c), 2656(g), 3475(e)
7234(d) (1) -----	2308(i) (1)	7272(b) -----	
7234(d) (2) (A) -----	2308(g) (1)	7273(a) -----	3274
7234(d) (2) (B) -----	2308(g) (2)	7273(b) -----	3294(b)
7234(d) (3) -----	2308(i) (2)	7274 -----	2656
7234(d) (4) -----	2308(d)	7275 -----	
7235(a) -----	2326(a)	7301(a) -----	2558(a), (b), 2571, 2598(a), (b), (c), 3253, 3321(b) (1), 3720(a) (1)
7235(b) -----	2326(b)	7301(b) -----	3321(b) (1), 3720(a) (2)
7235(c) -----	2326(c)		
7235(d) -----	3207(b)		
7235(e) -----	2327		
7236 -----	2357(b)		

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
7301(c) -----	2657(e), 3321(b) (1), 3720(a) (3)
7301(d) -----	3321(b) (2), 3322
7301(e) -----	3321(b) (3)
7302 -----	3116
7303(1) -----	1823
7303(2) -----	2309(b), 2358(b)
7303(3) -----	2309(d)
7303(4) -----	2358(a)
7303(5) -----	2309(b), 2358(b)
7303(6) (A) -----	2657(c)
7303(6) (B) -----	2656(c), 2657(a), (b), (f)
7303(7) -----	3323(b)
7303(8) -----	3793(a) (2)
7304 -----	3326
7321 -----	3720(b)
7322 -----	3721
7323(a) -----	3723(a)
7323(b) -----	3723(b)
7323(c) -----	3723(c)
7324 -----	3722
7325 -----	3724
7326 -----	-----
7327 -----	3726
7328 -----	2657
7329 -----	-----
7341(a) -----	3324(a)
7341(b) -----	3324(b)
7341(c) -----	3324(c)
7342 -----	3601(b)
7343 -----	145(d), 894(b) (2) (D), 1718(d), 1821(a) (4), 2557(b) (8), 2707(d), 3228, 3710(c), 3793(b) (2)
7344 -----	4048
7401 -----	3740
7402(a) -----	3800
7402(b) -----	3633
7402(c) -----	4042
7402(d) -----	3992, 3995(c)
7402(e) -----	-----
7403(a) -----	3678(a)
7403(b) -----	3678(b)
7403(c) -----	3678(c)

Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
7403(d) -----	3678(d)
7404 -----	826(a)
7405(a) -----	3746(a)
7405(b) -----	3746(b)
7405(c) -----	-----
7405(d) -----	-----
7406 -----	3747
7407 -----	-----
7421(a) -----	3653(a)
7421(b) -----	3653(b)
7422(a) -----	3772(a) (1)
7422(b) -----	3772(b)
7422(c) -----	3772(d)
7422(d) -----	3772(e)
7422(e) -----	-----
7422(f) -----	-----
7423(1) -----	3770(b) (1)
7423(2) -----	3770(b) (2)
7424(a) (1) -----	3679(a), (1)
7424(a) (2) -----	3679(a) (2)
7424(a) (3) -----	3679(a) (3)
7424(b) -----	3679(c)
7424(c) -----	3679(d)
7425 -----	-----
7441 -----	1100
7442 -----	1101
7443(a) -----	1102(a)
7443(b) -----	1102(b)
7443(c) -----	1102(c)
7443(d) -----	1102(d)
7443(e) -----	1102(e)
7443(f) -----	1102(f)
7443(g) -----	1102(g)
7444(a) -----	1103(a)
7444(b) -----	1103(b)
7444(c) -----	1103(c)
7444(d) -----	1103(d)
7445 -----	1104
7446 -----	1105
7447(a) -----	1106(a)
7447(b) -----	1106(b)
7447(c) -----	1106(c)
7447(d) -----	1106(d)
7447(e) -----	1106(e)
7447(f) -----	1106(f)
7447(g) -----	1106(g)
7451 -----	1110
7452 -----	504(b), R.A.1942
7453 -----	1111
7454(a) -----	1112

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Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.	Present 26 U.S.C.A. 1954 Code Sec.	Former 26 U.S.C.A. 1939 Code Sec.
7454(b) -----		7507(b) -----	3798(b)
7455 -----	1113	7507(c) -----	3798(c)
7456(a) -----	1114	7507(d) -----	3798(d)
7456(b) -----		7508(a) -----	3804(a), (f)
7456(c) -----	1114(b)	7508(b) -----	3804(d)
7457(a) -----	1115(a)	7509 -----	1424
7457(b) -----	1115(b)	7510 -----	3331
7458 -----	1116	7511 -----	3802
7459(a) -----	1117(a)	7601(a) -----	3600
7459(b) -----	1117(b)	7601(b) -----	
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*

Cite this Book

Thus: 26 U.S.C.A. (I.R.C.1939) § —

†

INTERNAL REVENUE CODE

OF 1939

Act Feb. 10, 1939, c. 2, 53 Stat. 1

An Act to consolidate and codify the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The laws of the United States hereinafter codified and set forth as a part of this title under the heading "Internal Revenue Title" are hereby enacted into law. 53 Stat. 1.

§ 2. Citation

This title and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I.R.C." 53 Stat. 1.

§ 3. Effective date

Except as otherwise provided herein, this title shall take effect on the day following the date of its enactment. 53 Stat. 1.

§ 4. Repeal and savings provisions

(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this title.

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all

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suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been passed.

(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this title, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this title or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect. 53 Stat. 1.

§ 5. Continuance of existing law

Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in force until the corresponding provision under such Title takes effect. 53 Stat. 1a.

§ 6. Arrangement, classification, and cross references

The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect. 53 Stat. 1a.

§ 7. Effect upon subsequent legislation

The enactment of this title shall not repeal nor affect any act of Congress passed since the 2d day of January 1939, and all acts passed since that date shall have full effect as if passed after the enactment of this title; but, so far as such acts vary from, or conflict with, any provision contained in this title, they are to have effect as subsequent statutes, and as repealing any portion of this title inconsistent therewith. 53 Stat. 1a.

§ 8. Copies as evidence of original

Copies of this title printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original Internal Revenue Code in the custody of the Secretary of State. 53 Stat. 1a.

§ 9. Publication

The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large,¹ with an appendix and index, but without marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote. 53 Stat. 1a.

¹ United States Statutes at Large. Volume 53, Part 1, Internal Revenue Code.

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§ 10. Internal Revenue Title

The Internal Revenue Title, heretofore referred to, and hereby and herein enacted into law, is as follows: * * *
53 Stat. 1a.

Internal Revenue Code of 1954. For complete text of Internal Revenue Code of 1954 together with historical notes, cross references and notes of decisions, see other volumes of this series marked "I.R.C.1954."

Change of Name. The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas.Dept.Order 150-29, eff. July 9, 1953.

1952 REORGANIZATION PLAN NO. 1

Eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, amended Act June 28, 1953, c. 189, § 12(c) (19), 69 Stat. 182

BUREAU OF INTERNAL REVENUE

Section 1. Abolition of existing offices.—There are abolished the offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel for the Bureau of Internal Revenue, Collector, and Deputy Collector, provided for in sections 3905, 3910, 3915, 3931, 3941, and 3990, respectively, of the Internal Revenue Code [1939]. The provisions of the foregoing sentence shall become effective with respect to each office abolished thereby at such time as the Secretary of the Treasury shall specify, but in no event later than December 1, 1952. The Secretary of the Treasury shall make such provisions as he shall deem necessary respecting the winding up of the affairs of any officer whose office is abolished by the provisions of this section.

Sec. 2. Establishment of new offices.—(a) New offices are hereby established in the Bureau of Internal Revenue as follows: (1) three offices each of which shall have the title of "Assistant Commissioner of Internal Revenue"; (2) so many offices, not in excess of twenty-five existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of "district commissioner of in-

ternal revenue"; and (3) so many other offices, not in excess of seventy existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time to time determine.

(b) There is hereby established in the Department of the Treasury a new and additional office which shall have the title "Assistant General Counsel".

Sec. 3. Appointment and compensation.—Each Assistant Commissioner and district commissioner, the Assistant General Counsel, and each other officer provided for in section 2 of this reorganization plan shall be appointed by the Secretary of the Treasury under the classified civil service and shall receive compensation which shall be fixed from time to time pursuant to the classification laws, as now or hereafter amended.

Sec. 4. Transfer of functions.—There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Internal Revenue of the Department of the Treasury since the effective date of Reorganization Plan Numbered 28 of 1950 (15 F.R. 4935).

1950 REORGANIZATION PLAN NO. 26

Eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, as amended June 5, 1952, ch. 369, ch. XI, § 1101, 66 Stat. 121.

Prepared by the President and transmitted to the Senate and the House of

Representatives in Congress assembled, May 31, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [sections 133z to 133z-15 of Title 5].

DEPARTMENT OF THE TREASURY

§ 1. Transfer of Functions to the Secretary

(a) Except as otherwise provided in subsection (b) of this section, and subject to the provisions of subsection (c) of this section, there are hereby transferred to the Secretary of the Treasury all functions of all other officers of the Department of the Treasury and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative

Procedure Act (60 Stat. 237) [sections 1001-1011 of Title 5] in hearing examiners employed by the Department of the Treasury or to functions vested by any provision of law in the Comptroller of the Currency.

(c) Notwithstanding the transfer to the Secretary of the Treasury of the functions of the United States Coast Guard and of the functions of the Commandant of the Coast Guard, effected by the provisions of subsection (a) of this section, such Coast Guard, together with the said

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functions, shall operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President shall so direct, as provided in section 1 of the Act of January 23, 1915 (c. 20, 38 Stat. 800, as amended, 14 U.S.C.A. 1).

§ 2. Performance of Functions of Secretary

The Secretary of the Treasury may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Treasury of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

§ 3. Administrative Assistant Secretary

There shall be in the Department of the Treasury an Administrative Assistant

Secretary of the Treasury, who shall be appointed, with the approval of the President, by the Secretary of the Treasury under the classified civil service, who shall perform such duties as the Secretary of the Treasury shall prescribe, and who shall receive compensation at the rate of \$14,800 per annum.

§ 4. Incidental Transfers

The Secretary of the Treasury may from time to time effect such transfers within the Department of the Treasury of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

APPLICABILITY OF 1950 REORG. PLAN NO. 26 TO REVENUE ACT OF 1951

Section 616 of the Revenue Act of 1951 (Oct. 20, 1951, 2:07 p. m., H. S. T., c. 521, title VI, 65 Stat. 569, provided that the provisions of 1950 Reorg. Plan No. 26

should be applicable to all functions vested by such Act in any officer, employee, or agency of the Department of the Treasury.

INTERNAL REVENUE TITLE

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INCOME TAX

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- 421. Abatement of tax for members of armed forces upon death.¹
 - 422. Unrelated business net income.
 - 423. Supplement U lease.
 - 424. Taxes on foreign countries and possessions of the United States.
- ¹ So in original.

SUBCHAPTER D.—EXCESS PROFITS TAX

430-474.

SUBCHAPTER E.—TAX ON SELF-EMPLOYMENT INCOME

- 480. Rate of tax.
- 481. Definitions.
- 482. Miscellaneous provisions.

SUBCHAPTER A.—INTRODUCTORY PROVISIONS

§ 1. Application of chapter

The provisions of this chapter shall apply only to taxable years beginning after December 31, 1938. Income, war-profits, and excess-profits taxes for taxable years beginning prior to January 1, 1939, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1938 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1938. 53 Stat. 4.

Historical Note

References in Text. Revenue Act of 1938, referred to in text, is Act May 28, 1938, c. 289, 52 Stat. 447. For complete original text of Revenue Act 1938 and

prior revenue acts, referred to in text, see Volumes "Title 26—Internal Revenue Acts".

§ 2. Cross references

The cross references in this chapter to other portions of the chapter, where the word "see" is used, are made only for convenience, and shall be given no legal effect. 53 Stat. 4.

§ 3. Classification of provisions

The provisions of this chapter are herein classified and designated as—

Subchapter A—Introductory provisions,

Subchapter B—General provisions, divided into Parts and sections,

Subchapter C—Supplemental provisions, divided into Supplements and sections.

Subchapter D—Stricken.

Subchapter E—Tax on Self-Employment Income (the Self-Employment Contributions Act), divided into sections. 53 Stat. 4, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 172(b), 56 Stat. 892; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 6(b) (1), 58 Stat. 234; Aug. 28, 1950, c. 809, Title II, § 208(d) (1), 64 Stat. 544.

Historical Note

References in Text. The "Self-Employment Contributions Act", referred to in text, is set out as sections 480-482 of I.R.C.1939.

1950 Amendment. Act Aug. 28, 1950, amended section by adding "Subchapter E—Tax on Self-Employment Income * * * into sections."

1944 Amendment. Act May 29, 1944, amended section by striking out "Subchapter D—Victory tax on individuals, divided into parts and sections."

1942 Amendment. Act Oct. 21, 1942, added "Subchapter D—Victory Tax on individuals, divided into parts and sections."

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 172(g) of Act Oct. 21, 1942 provided that the amendment of this section was made effective Jan. 1, 1943, applicable to all wages paid on or after such date.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided that "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong. Service, p. 3287. See, also, Act May 29, 1944, 1944 U.S.Code Cong. Service, p. 1056.

§ 4. Special classes of taxpayers

The application of the General Provisions and of Supplements A to D, inclusive, to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in the Supplement applicable to such class, as follows:

- (a) Estates and trusts and the beneficiaries thereof,—Supplement E.
- (b) Members of partnerships,—Supplement F.
- (c) Insurance companies,—Supplement G.
- (d) Nonresident alien individuals,—Supplement H.
- (e) Foreign corporations,—Supplement I.
- (f) Individual citizens of any possession of the United States who are not otherwise citizens of the United States and who are not residents of the United States,—Supplement J.
- (g) Individual citizens of the United States or domestic corporations, satisfying the conditions of section 251 by reason of deriving a large portion of their gross income from sources within a possession of the United States,—Supplement J.
- (h) China Trade Act corporations,—Supplement K.
- (i) Foreign personal holding companies and their shareholders,—Supplement P.
- (j) Regulated investment companies,—Supplement Q.
- (k) Shareholders of Personal Service Corporations,—Supplement S.
- (l) Individuals with adjusted gross income of less than \$5,000,—Supplement T. 53 Stat. 4, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(c), 55 Stat. 692; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 170(b) (1), 56 Stat. 881; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 5(b), 58 Stat. 234.

Historical Note

1944 Amendment. Subsec. (l) amended by Act May 29, 1944, which struck out subsec. "(l) Individuals with gross income from certain sources of \$3000 or less,—Supplement T" and inserted new subsec. "(l)."

1942 Amendment. Subsec. (j) amended by Act Oct. 21, 1942, which substituted "Regulated" for "Mutual" investment companies.

1941 Amendment. Subsecs. (k) and (l) added by Act Sept. 20, 1941.

Effective Date of 1944 Amendment. Amendment of subsec. (l) made applicable to taxable years beginning after Dec. 31, 1943 by section 2 of Act May 29, 1944.

Effective Date of 1942 Amendment. Amendment of subsec. (j) made applicable to taxable years beginning after Dec. 31, 1941 by section 101 of Act Oct. 21, 1942.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941 provided

that the amendment of this section was made applicable only to taxable years beginning after Dec. 31, 1940.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided that "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S. Code Cong. Service, p. 1058.

SUBCHAPTER B.—GENERAL PROVISIONS

PART I—RATES OF TAX

§ 11. Normal tax on individuals

(a) **Taxable years beginning after September 30, 1950.** In the case of taxable years beginning after September 30, 1950, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25. For alternative tax which may be elected if adjusted gross income is less than \$5,000, see supplement T.

(b) **Taxable years beginning before October 1, 1950.** In the case of taxable years beginning before October 1, 1950, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax determined by computing a tentative normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25, and by reducing such tentative normal tax as provided in section 12(c). For alternative tax which may be elected if adjusted gross income is less than \$5,000, see supplement T. For computation of tax in case the taxable year (other than the calendar year 1950) ends after September 30, 1950, see section 108(e). 53 Stat. 5, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(b) (1), 55 Stat. 692; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 102, 56 Stat. 802; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 3, 58 Stat. 231; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 101(a), 59 Stat. 557; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title I, § 104(a), 62 Stat. 111; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. 1, § 101(a), 64 Stat. 910.

Historical Note

1950 Amendment. Act Sept. 23, 1950, amended section generally to increase the normal tax on individuals after Oct. 1, 1950, although the tax rate base will remain the same.

1948 Amendment. Act Apr. 2, 1948, made a technical amendment by striking out "by 5 per centum thereof" and inserting in lieu thereof "as provided in section 12(c)."

1945 Amendment. Act Nov. 8, 1945, amended section by adding "determined by computing a tentative normal tax", omitting "(a)" following "section 25", and adding "and by reducing such tentative normal tax by 5 per centum thereof."

1944 Amendment. Act May 29, 1944, amended section by changing tax rate from 6% to 3%, omitting "(For alternate tax, if gross income from certain sources is \$3000 or less, see section 400)" following "section 25", and adding last sentence.

1942 Amendment. Rate increased from 4 to 6 per centum by Act Oct. 21, 1942.

1941 Amendment. Parenthetical cross-reference to section 400 was inserted by Act Sept. 20, 1941.

Effective Date of 1950 Amendments. Section 104 of Act Sept. 23, 1950, pro-

vided that: "Except as provided in section 103 [set out as a note under this section], the amendments made by this part [amending sections 11, 12, and 400 of I.R.C.1939] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before October 1, 1950, and ending after September 30, 1950, see section 131 [section 108 (e)-(g) of I.R.C. 1939]."

Effective Date of 1948 Amendment. Section 105 of Act Apr. 2, 1948, provided that the amendment made by section 104 (a) of said Act Apr. 2, 1948, to section 11 of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending 1948 shall be governed by subsec. (d) of section 108 of I.R.C. 1939.

Effective Date of 1945 Amendment. Section 101(d) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided

that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941 provided that the amendment of this section was made applicable only to taxable years beginning after Dec. 31, 1940.

Short Title. Congress in enacting Act Sept. 23, 1950, provided by section 1 of said Act Sept. 23, 1950, that it should be popularly known as the "Revenue Act of 1950".

Congress in enacting amendments to sections 11, 12, 23, 25, 51, 58, 108, 113, 142, 147, 163, 400, 811-813, 936, 1000, 1004 and 1622 of this title by Act Apr. 2, 1948, provided by section 1 of said Act Apr. 2, 1948, that it should be popularly known as the "Revenue Act of 1948."

Computation of Tax in Case of Certain Joint Returns. Section 103 of Act Sept. 23, 1950, provided that: "If a joint return of a husband and wife is filed under the provisions of section 51(b) (3) of the Internal Revenue Code [section 51(b) (3) of I.R.C.1939] in a case where the husband and wife have different taxable years because of the death of either spouse and the taxable year of the sur-

living spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, the amendments made by this part [amending sections 11, 12 and 400 of I.R.C.1939] shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year."

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4 30 p m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808
1941—Sept 20, 1941, 12:15 p.m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053. See, also, Acts Apr. 2, 1948, see 1948 U.S.Code Cong. Service, p. 1163; Nov. 8, 1945, 1945 U.S. Code Cong.Service, p. 814; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 12

INCOME TAX

§ 12. Surtax on individuals

(a) Definition of "surtax net income". As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25(b).

(b) Rates of surtax.

(1) Calendar year 1951. In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, there shall be levied, collected, and paid for such taxable year upon the surtax net income of every individual the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over \$2,000.....	17.4% of the surtax net income.
Over \$2,000 but not over \$4,000.....	\$348, plus 19.4% of excess over \$2,000.
Over \$4,000 but not over \$6,000.....	\$736, plus 24% of excess over \$4,000.
Over \$6,000 but not over \$8,000.....	\$1,216, plus 27% of excess over \$6,000.
Over \$8,000 but not over \$10,000....	\$1,756, plus 32% of excess over \$8,000.
Over \$10,000 but not over \$12,000...	\$2,396, plus 36% of excess over \$10,000.
Over \$12,000 but not over \$14,000...	\$3,116, plus 40% of excess over \$12,000.
Over \$14,000 but not over \$16,000...	\$3,916, plus 45% of excess over \$14,000.
Over \$16,000 but not over \$18,000...	\$4,816, plus 48% of excess over \$16,000.
Over \$18,000 but not over \$20,000...	\$5,776, plus 51% of excess over \$18,000.
Over \$20,000 but not over \$22,000...	\$6,796, plus 54% of excess over \$20,000.
Over \$22,000 but not over \$26,000...	\$7,876, plus 57% of excess over \$22,000.
Over \$26,000 but not over \$32,000...	\$10,156, plus 60% of excess over \$26,000.
Over \$32,000 but not over \$38,000...	\$13,756, plus 63% of excess over \$32,000.
Over \$38,000 but not over \$44,000...	\$17,536, plus 66% of excess over \$38,000.
Over \$44,000 but not over \$50,000...	\$21,496, plus 70% of excess over \$44,000.
Over \$50,000 but not over \$60,000...	\$25,696, plus 72% of excess over \$50,000.
Over \$60,000 but not over \$70,000...	\$32,896, plus 75% of excess over \$60,000.
Over \$70,000 but not over \$80,000...	\$40,396, plus 79% of excess over \$70,000.
Over \$80,000 but not over \$90,000...	\$48,296, plus 81% of excess over \$80,000.
Over \$90,000 but not over \$100,000..	\$56,396, plus 84% of excess over \$90,000.
Over \$100,000 but not over \$150,000	\$64,796, plus 86% of excess over \$100,000.
Over \$150,000 but not over \$200,000	\$107,796, plus 87% of excess over \$150,000.
Over \$200,000	\$151,296, plus 88% of excess over \$200,000.

(2) Taxable years beginning after October 31, 1951, and before January 1, 1954. In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual (other than a head of a household to whom subsection (c) applies) the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over \$2,000.....	19.2% of the surtax net income.
Over \$2,000 but not over \$4,000.....	\$384, plus 21.6 % of excess over \$2,000
Over \$4,000 but not over \$6,000.....	\$816, plus 26% of excess over \$4,000.
Over \$6,000 but not over \$8,000.....	\$1,336, plus 31 % of excess over \$6,000.
Over \$8,000 but not over \$10,000....	\$1,956, plus 35 % of excess over \$8,000.
Over \$10,000 but not over \$12,000...	\$2,656, plus 39% of excess over \$10,000.
Over \$12,000 but not over \$14,000...	\$3,436, plus 45% of excess over \$12,000.
Over \$14,000 but not over \$16,000...	\$4,336, plus 50 % of excess over \$14,000.
Over \$16,000 but not over \$18,000...	\$5,336, plus 53% of excess over \$16,000.
Over \$18,000 but not over \$20,000...	\$6,396, plus 56 % of excess over \$18,000.
Over \$20,000 but not over \$22,000...	\$7,516, plus 59% of excess over \$20,000.
Over \$22,000 but not over \$26,000...	\$8,696, plus 63 % of excess over \$22,000.
Over \$26,000 but not over \$32,000...	\$11,216, plus 64% of excess over \$26,000.
Over \$32,000 but not over \$38,000...	\$15,056, plus 65 % of excess over \$32,000.
Over \$38,000 but not over \$44,000...	\$18,956, plus 69% of excess over \$38,000.
Over \$44,000 but not over \$50,000...	\$23,096, plus 72% of excess over \$44,000.
Over \$50,000 but not over \$60,000...	\$27,416, plus 74% of excess over \$50,000.
Over \$60,000 but not over \$70,000...	\$34,816, plus 77% of excess over \$60,000.
Over \$70,000 but not over \$80,000...	\$42,516, plus 80% of excess over \$70,000.
Over \$80,000 but not over \$90,000...	\$50,516, plus 82% of excess over \$80,000.
Over \$90,000 but not over \$100,000..	\$58,716, plus 85 % of excess over \$90,000.
Over \$100,000 but not over \$150,000	\$67,216, plus 87% of excess over \$100,000.
Over \$150,000 but not over \$200,000	\$110,716, plus 88 % of excess over \$150,000.
Over \$200,000	\$154,716, plus 89% of excess over \$200,000.

(3) Taxable years beginning after December 31, 1953. In the case of taxable years beginning after December 31, 1953, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual (other than a head of a household to whom subsection (c) applies) the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over \$2,000.....	17% of the surtax net income.
Over \$2,000 but not over \$4,000.....	\$340, plus 19% of excess over \$2,000.
Over \$4,000 but not over \$6,000.....	\$720, plus 23% of excess over \$4,000.
Over \$6,000 but not over \$8,000.....	\$1,180, plus 27% of excess over \$6,000.
Over \$8,000 but not over \$10,000....	\$1,720, plus 31% of excess over \$8,000.
Over \$10,000 but not over \$12,000...	\$2,340, plus 35% of excess over \$10,000.
Over \$12,000 but not over \$14,000...	\$3,040, plus 40% of excess over \$12,000.
Over \$14,000 but not over \$16,000...	\$3,840, plus 44% of excess over \$14,000.
Over \$16,000 but not over \$18,000...	\$4,720, plus 47% of excess over \$16,000.
Over \$18,000 but not over \$20,000...	\$5,660, plus 50% of excess over \$18,000.
Over \$20,000 but not over \$22,000...	\$6,660, plus 53% of excess over \$20,000.
Over \$22,000 but not over \$26,000...	\$7,720, plus 56% of excess over \$22,000.
Over \$26,000 but not over \$32,000...	\$9,960, plus 59% of excess over \$26,000.
Over \$32,000 but not over \$38,000...	\$13,500, plus 62% of excess over \$32,000.
Over \$38,000 but not over \$44,000...	\$17,220, plus 66% of excess over \$38,000.
Over \$44,000 but not over \$50,000...	\$21,180, plus 69% of excess over \$44,000.
Over \$50,000 but not over \$60,000...	\$25,320, plus 72% of excess over \$50,000.
Over \$60,000 but not over \$70,000...	\$32,520, plus 75% of excess over \$60,000.
Over \$70,000 but not over \$80,000...	\$40,020, plus 78% of excess over \$70,000.
Over \$80,000 but not over \$90,000...	\$47,820, plus 81% of excess over \$80,000.
Over \$90,000 but not over \$100,000..	\$55,920, plus 84% of excess over \$90,000.
Over \$100,000 but not over \$150,000	\$64,320, plus 86% of excess over \$100,000.
Over \$150,000 but not over \$200,000	\$107,320, plus 87% of excess over \$150,000.
Over \$200,000.....	\$150,820, plus 88% of excess over \$200,000.

(c) Rates of surtax—Head of household.

(1) Taxable years beginning after October 31, 1951, and before January 1, 1954. In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual who is the head of a household the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over \$2,000.....	19.2 % of the surtax net income.
Over \$2,000 but not over \$4,000.....	\$384, plus 20.4 % of excess over \$2,000.
Over \$4,000 but not over \$6,000	\$792, plus 24 % of excess over \$4,000.
Over \$6,000 but not over \$8,000....	\$1,272, plus 26% of excess over \$6,000.
Over \$8,000 but not over \$10,000....	\$1,792, plus 31 % of excess over \$8,000.
Over \$10,000 but not over \$12,000...	\$2,412, plus 32% of excess over \$10,000.
Over \$12,000 but not over \$14,000...	\$3,052, plus 38 % of excess over \$12,000.
Over \$14,000 but not over \$16,000...	\$3,812, plus 41% of excess over \$14,000.
Over \$16,000 but not over \$18,000...	\$4,632, plus 44% of excess over \$16,000.
Over \$18,000 but not over \$20,000...	\$5,512, plus 45% of excess over \$18,000.
Over \$20,000 but not over \$22,000...	\$6,412, plus 49 % of excess over \$20,000.
Over \$22,000 but not over \$24,000...	\$7,392, plus 51% of excess over \$22,000.
Over \$24,000 but not over \$28,000...	\$8,412, plus 54 % of excess over \$24,000.
Over \$28,000 but not over \$32,000...	\$10,572, plus 57% of excess over \$28,000.
Over \$32,000 but not over \$38,000...	\$12,852, plus 60 % of excess over \$32,000.
Over \$38,000 but not over \$44,000...	\$16,452, plus 63% of excess over \$38,000.
Over \$44,000 but not over \$50,000...	\$20,232, plus 68 % of excess over \$44,000.
Over \$50,000 but not over \$60,000...	\$24,312, plus 69% of excess over \$50,000.
Over \$60,000 but not over \$70,000...	\$31,212, plus 70 % of excess over \$60,000.
Over \$70,000 but not over \$80,000...	\$38,212, plus 74% of excess over \$70,000.
Over \$80,000 but not over \$90,000...	\$45,612, plus 76 % of excess over \$80,000.
Over \$90,000 but not over \$100,000..	\$53,212, plus 78% of excess over \$90,000.
Over \$100,000 but not over \$150,000	\$61,012, plus 82 % of excess over \$100,000.
Over \$150,000 but not over \$200,000	\$102,012, plus 85% of excess over \$150,000.
Over \$200,000 but not over \$300,000	\$144,512, plus 88 % of excess over \$200,000.
Over \$300,000	\$232,512, plus 89% of excess over \$300,000.

§ 12

INCOME TAX

(2) Taxable years beginning after December 31, 1953. In the case of taxable years beginning after December 31, 1953, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual who is the head of a household the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over \$2,000.....	17% of the surtax net income.
Over \$2,000 but not over \$4,000.....	\$340, plus 18% of excess over \$2,000.
Over \$4,000 but not over \$6,000.....	\$700, plus 21% of excess over \$4,000.
Over \$6,000 but not over \$8,000.....	\$1,120, plus 23% of excess over \$6,000.
Over \$8,000 but not over \$10,000....	\$1,580, plus 27% of excess over \$8,000.
Over \$10,000 but not over \$12,000...	\$2,120, plus 29% of excess over \$10,000.
Over \$12,000 but not over \$14,000...	\$2,700, plus 33% of excess over \$12,000.
Over \$14,000 but not over \$16,000...	\$3,360, plus 36% of excess over \$14,000.
Over \$16,000 but not over \$18,000...	\$4,080, plus 39% of excess over \$16,000.
Over \$18,000 but not over \$20,000...	\$4,860, plus 40% of excess over \$18,000.
Over \$20,000 but not over \$22,000...	\$5,660, plus 44% of excess over \$20,000.
Over \$22,000 but not over \$24,000...	\$6,540, plus 46% of excess over \$22,000.
Over \$24,000 but not over \$28,000...	\$7,460, plus 49% of excess over \$24,000.
Over \$28,000 but not over \$32,000...	\$9,420, plus 51% of excess over \$28,000.
Over \$32,000 but not over \$38,000...	\$11,460, plus 55% of excess over \$32,000.
Over \$38,000 but not over \$44,000...	\$14,760, plus 59% of excess over \$38,000.
Over \$44,000 but not over \$50,000...	\$18,300, plus 63% of excess over \$44,000.
Over \$50,000 but not over \$60,000...	\$22,080, plus 65% of excess over \$50,000.
Over \$60,000 but not over \$70,000...	\$28,580, plus 68% of excess over \$60,000.
Over \$70,000 but not over \$80,000...	\$35,380, plus 71% of excess over \$70,000.
Over \$80,000 but not over \$90,000...	\$42,480, plus 73% of excess over \$80,000.
Over \$90,000 but not over \$100,000..	\$49,780, plus 77% of excess over \$90,000.
Over \$100,000 but not over \$150,000	\$57,480, plus 80% of excess over \$100,000.
Over \$150,000 but not over \$200,000	\$97,480, plus 84% of excess over \$150,000.
Over \$200,000 but not over \$300,000	\$139,480, plus 87% of excess over \$200,000.
Over \$300,000	\$226,480, plus 88% of excess over \$300,000.

(3) **Definition of head of household.** For the purposes of this chapter, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year and maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of:

(A) A son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to an exemption for the taxable year for such person under section 25 (b); or

(B) Any other person who is a dependent of the taxpayer, if the taxpayer is entitled to an exemption for the taxable year for such person under section 25 (b).

An individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(4) **Determination of status.** For the purposes of this subsection—

(A) a legally adopted child of a person shall be considered a child of such person by blood;

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(C) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(D) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (C)) died during the taxable year.

(5) **Nonresident alien.** For the purposes of this chapter a taxpayer shall in no case be considered a head of a household if at any time during the taxable year he is a nonresident alien.

(d) **Tax in case of joint return.** In the case of a joint return of husband and wife under section 51(b), the combined normal tax and surtax under section 11 and subsection (b) of this section shall be twice the combined normal tax and surtax that would be determined if the net income and the applicable credits against net income provided by section 25 were reduced by one-half.

(e) **Computation of tax without regard to credits against tax.** In the application of this section, the combined normal tax and surtax shall be computed without regard to the credits provided in sections 31, 32, and 35.

(f) **Limitation on tax.**

(1) **Calendar year 1951.** In the case of a taxable year beginning on January 1, 1951, and ending December 31, 1951, the combined normal tax and surtax shall in no event exceed 87.2 per centum of the net income for the taxable year.

(2) **Taxable years beginning after October 31, 1951, and before January 1, 1954.** In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, the combined normal tax and surtax shall in no event exceed 88 per centum of the net income of the taxable year.

(3) **Taxable years beginning after December 31, 1953.** In the case of taxable years beginning after December 31, 1953, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year.

(g) Cross references.

(1) **Alternative tax.** For alternative tax which may be elected if adjusted gross income is less than \$5,000, see Supplement T.

(2) **Tax in case of capital gains.** For rate and computation of alternative tax in lieu of normal tax and surtax in the case of capital gain from the sale or exchange of capital assets held for more than 6 months, see section 117(c).

(3) **Tax on personal holding companies.** For surtax on personal holding companies, see section 500.

(4) **Avoidance of surtaxes by incorporation.** For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(5) **Sale of oil or gas properties.** For limitation of surtax attributable to the sale of oil or gas properties, see section 105.

(6) **Tax on self-employment income.** For tax on self-employment income, see subchapter E. 53 Stat. 5, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 2, 54 Stat. 516; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 101, 102(b) (2), 55 Stat. 688, 692; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 103, 150(j), 56 Stat. 802, 846; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 4, 58 Stat. 231; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 101 (b, c), 59 Stat. 557, 558; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title I, §§ 101, 104(b, c), Title III, § 301, 62 Stat. 111, 114; Aug. 28, 1950, c. 809, Title II, § 208(d) (2), 64 Stat. 544; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. 1, § 101(b), 64 Stat. 910; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 101, Title III, § 301 (a), 65 Stat. 459, 480.

Historical Note

1951 Amendment. Subsec. (b) amended by Act Oct. 20, 1951, § 101(a), to increase the tax rates beginning Nov. 1, 1951.

Subsec. (c) amended generally by Act Oct. 20, 1951, § 301(a), to provide a new surtax table for a "head of a household."

Subsec. (f) amended by Act Oct. 20, 1951, § 101(b), to change the limitation on the total tax.

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, § 101(b) (1), (2), to provide for the increase in taxes after Oct. 1, 1950, although the tax rate base will remain the same.

Subsec. (c) amended by Act Sept. 23, 1950, § 101(b) (3), to increase tax rates after Oct. 1, 1950, by decreasing the amount of the reduction allowable.

Subsec. (f) amended by Act Sept. 23, 1950, § 101(b) (4), to provide for a limitation on total tax.

Subsec. (g) amended by Act Aug. 28, 1950, which added par (6).

1948 Amendment. Subsec. (b) amended by Act Apr. 2, 1948, § 104(a), which made a technical amendment by striking out "by 5 per centum thereof" and inserting in lieu thereof "as provided in subsection (c) of this section."

Subsec. (c) amended generally by Act Apr. 2, 1948, § 101, which struck out

former cross reference provisions and inserted the provision relating to reduction of tentative normal tax and tentative surtax.

Subsec. (d) added by Act Apr. 2, 1948, § 301, which provides for the computation of tax under the so-called income splitting plan between husband and wife.

Subsecs. (e)-(g), formerly subsecs. (d)-(h), renumbered and amended generally by Act Apr. 2, 1948, § 104(c).

1945 Amendment. Subsec. (b) amended generally by Act Nov. 8, 1945, § 101 (b), and the surtax reduced in all brackets.

Subsec. (g) amended by Act Nov. 8, 1945, § 101(c), which substituted "85½ per centum" for "90 per centum".

1944 Amendment. Subsec. (b) amended generally by Act May 29, 1944, § 4(a), which increased surtax rates in certain brackets.

Subsec. (g) amended by Act May 29, 1944, § 4(b), which struck out said subsec. and inserted in lieu subsecs. (g) and (h).

1942 Amendment. Subsecs. (b) and (c) amended by Act Oct. 21, 1942,

1941 Amendment. Subsec. (b) amended by Act Sept. 20, 1941, § 101.

Subsec. (g) added by Act Sept. 20, 1941, § 102(b) (2).

1940 Amendment. Subsec. (b) amended by Act June 25, 1940.

Effective Date of 1951 Amendments. Section 105 of Act Oct. 20, 1951, provided that: "Except as provided in section 104 [set out as a note under this section], the amendments made by this part [sections 12, 145, 294 and 400 of I.R.C.1939] shall be applicable only with respect to taxable years beginning after October 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951. For treatment of taxable years (other than the calendar year 1951) beginning before November 1, 1951, and ending after October 31, 1951, see section 131 [sections 108 and 430 of I.R.C. 1939]."

Section 131(c) of Act Oct. 20, 1951 provided in part that the amendment should be applicable with respect to taxable years beginning after June 30, 1950.

Effective Date of 1950 Amendments. Amendments of subsecs. (b) and (c) of this section by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1949, see note set out under section 11 of I.R.C. 1939.

Amendment of subsec. (f) of this section was made effective with respect to taxable years beginning after Sept. 30, 1950, by section 101(b) (4) of Act Sept. 23, 1950.

Effective Date of 1948 Amendment. Section 105 of Act Apr. 2, 1948, provided that the amendments made by sections 101 and 104 of said Act Apr. 2, 1948, to section 12 of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 103 of I.R.C.1939.

Section 305 of Act Apr. 2, 1948, provided that amendment by section 301 of said Act Apr. 2, 1948, should be applicable to taxable years beginning after Dec. 31, 1948.

Effective Date of 1945 Amendment. Section 101(d) of Act Nov. 8, 1945, provided that the amendments of this section were made applicable to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendments of this section were made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1940.

Effective Date of 1940 Amendment. Section 9 of Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [affecting sections 143, 144 of I.R.C. 1939], shall be applicable only with respect to taxable years beginning after December 31, 1939."

Computation of Tax in Case of Certain Joint Returns. Section 104 of Act Oct. 12, 1951, provided that: "If a joint return of a husband and wife is filed under the provisions of section 51(b) (3) of the Internal Revenue Code [section 51(b) (3) of I.R.C.1939] in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before November 1, 1951, and ended after October 31, 1951, the amendments made by this part [amending sections 11, 12, and 400 of I.R.C.1939] and section 131 shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following acts:

1950—Sept. 23, 1950, 3:15 p.m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1950, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also, Acts Aug. 23, 1950, 1950 U.S.Code Cong. Service, p. 3053; Apr. 2, 1948, 1948 U.S. Code Cong.Service, p. 1163; Nov. 8, 1945, 1945 U.S.Code Cong.Service, p. 814; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 13. Normal tax on corporations

(a) Definitions. For the purposes of this chapter—

(1) **Adjusted net income.** The term "adjusted net income" means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

(2) **Normal-tax net income.** The term "normal-tax net income" means the adjusted net income minus the sum of the following credits:

(A) The credit for dividends received provided in section 26 (b);

(B) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h); and

(C) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26(i).

(b) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation (except a corporation subject to a tax imposed by section 231 (a), Supplement G, or Supplement Q)—

(1) **Calendar year 1951.** In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, a tax of 28 ¾ per centum of the normal-tax net income.

(2) **Taxable years beginning after March 31, 1951, and before April 1, 1954.** In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, a tax of 30 per centum of the normal-tax income.

(3) **Taxable years beginning after March 31, 1954.** In the case of taxable years beginning after March 31, 1954, a tax of 25 per centum of the normal-tax net income.

(c) **Exempt corporations.** For corporations exempt from taxes under this chapter, see section 101.

(d) **Tax on personal holding companies.** For surtax on personal holding companies, see section 500.

(e) **Improper accumulation of surplus.** For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(f) **Mutual savings banks conducting life insurance business.** For special tax, in lieu of the taxes imposed by this section and section 15, in the case of a mutual savings bank conducting a life insurance business, see section 110. 53 Stat. 7, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 201, 53 Stat. 863; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 3(a), 54 Stat. 517; Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title I, § 101(a), 54 Stat. 974; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 103(a), 55 Stat. 692; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 105(a), 56 Stat. 805; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (2), 59 Stat. 570; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(a), 64 Stat. 914; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 121(a), Title III, § 346(b), 65 Stat. 465, 518.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 121(a), to redefine "adjusted net income" and "normal-tax net income".

Subsec. (b) amended by Act Oct. 20, 1951, § 121(a), to increase the tax imposed.

Subsec. (f) added by Act Oct. 20, 1951, § 346(b).

1950 Amendment. Act Sept. 23, 1950, amended section generally to increase corporation tax rates.

1945 Amendment. Subsec. (a) (2) amended by Act Nov. 8, 1945, which struck out "minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26 (e) and" following "adjusted net income".

1942 Amendment. Subsecs. (a) (2) and (b) (2) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (b), pars. (1) and (2), amended by Act Sept. 20, 1941.

1940 Amendment. Subsection (b) amended by Acts June 25, 1940, and Oct. 8, 1940, which changed "18 per centum" to "22 $\frac{1}{10}$ per centum," "\$3,525" to "\$3,755," and "32 per centum" to "35 per centum."

1939 Amendment. Act June 29, 1939, amended subs. (a)-(e) and omitted subs. (f)-(j).

Effective Date of 1951 Amendments. Section 125 of Act Oct. 20, 1951, provided that: "The amendments made by this part [subs. (a), (b) of this section and sections 15, 26, 207, 362, 421, and 430 of I.R.C.1939] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, except that the amendments made to sections 207, 362, and 421 of the Internal Revenue Code [sections 207, 362, and 421 of I.R.C.1939] shall be applicable to taxable years beginning after December 31, 1950, and ending after March 31, 1951. In the case of an insurance company subject to the tax imposed by section 207 [section 207 of I.R.C.1939], the provisions of section 26(b) of such code [section 26(b) of I.R.C.1939] applicable to the calendar year 1951 shall be applicable to a taxable year beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951. For treatment of taxable years (other than the calendar year 1951) beginning before April 1, 1951, and ending after March 31, 1951, see section 131 [sections 108 and 430 of I.R.C.1939]."

Addition of subsec. (f) made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 346 (c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Section 123 of Act Sept. 23, 1950, provided that the amendments of sections 13, 14(a), 15, 26(b), (h) (1), (2), (i), 122, and 141 should be applicable only with respect to taxable years ending after Dec. 31, and further provided that for treatment of taxable years (other than calendar year 1950) beginning before July 1, 1950, and ending after June 30, 1950, recourse is to be had to section 108 (e)-(g) of I.R.C.1939.

Effective Date of 1945 Amendment. Section 122(g) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945.

§ 14. Repealed. Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, Pt. II, § 121(g), 65 Stat. 469.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1940.

Effective Dates of 1940 Amendment. Section 101(e) of Act Oct. 8, 1940, provided that the amendment of this section was applicable only with respect to taxable years beginning after Dec. 31, 1939.

Section 9 of Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [affecting sections 143, 144, of I.R.C. 1939], shall be applicable only with respect to taxable years beginning after December 31, 1939."

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States"

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T.,

c. 994, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T.,

c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T.,

c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E.S.T.,

c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053; Nov. 8, 1945, 1945 U.S.Code Cong.Service, p. 814.

Section, Acts 53 Stat. 8; June 29, 1939, 10 p. m., E.S.T., c. 247, Title II, § 201, 53 Stat. 863; June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 3(b), 54 Stat. 417; Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title I, § 101 (b), 54 Stat. 974; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 103(b) (c), 55 Stat. 692, 693;

Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, §§ 160(b), 170(b) (2), 56 Stat. 861, 881; Sept. 23, 1950, c. 994, Title I, pt. II, § 121(b), 64 Stat. 915, which derived from Act May 28, 1938, c. 289, § 14, 52 Stat. 456, related to tax on special classes of corporations and was later covered by section 13 of I.R.C.1939.

Historical Note

§ 15. Surtax on corporations

(a) **Corporation surtax net income.** For the purposes of this chapter, the term "corporation surtax net income" means the net income minus the sum of the following credits:

- (1) The credit for dividends received provided in section 26 (b);
- (2) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26 (h);
- (3) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26 (i).

(b) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a corporation subject to a tax imposed by section 231 (a), Supplement G, or Supplement Q) a surtax of 22 per centum of the amount of the corporation surtax net income in excess of \$25,000.

(c) **Disallowance of surtax exemption and minimum excess profits credit.** If any corporation transfers, on or after January 1, 1951, all or part of its property (other than money) to another corporation which was created for the purpose of acquiring such property or which was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor corporation or its stockholders, or both, are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then such transferee corporation shall not for such taxable year (except as may be otherwise determined under section 129 (b)) be allowed either the \$25,000 exemption from surtax provided in subsection (b) or the \$25,000 minimum excess profits credit provided in the last sentence of section 431, unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of such transfer. For the purposes of this subsection, control means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote or at least 80 per centum of the total value of shares of all classes of stock of the corporation. In determining the ownership of stock for the purpose of this subsection, the ownership of stock shall be determined in accordance with the provisions of section 503, except that constructive ownership under section 503 (a) (2) shall be determined only with respect to the individual's spouse and minor children. The provisions of section 129 (b), and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this subsection, be applicable to this subsection. This subsection shall not apply to any taxable year with respect to which the tax imposed by subchapter D of this chapter is not in effect. Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 201, 54 Stat. 520, amended Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title I, § 101(d), 54 Stat. 974; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 104(a), 55 Stat. 693; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 105(b), 56 Stat. 805; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, §§ 121(a), 122(g) (3), 59 Stat. 568, 570; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(c), 64 Stat. 915; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 201(a), 64 Stat. 1216; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 121(f), 65 Stat. 468.

Historical Note

1951 Amendments. Act Oct. 20, 1951, amended section generally to restate definition of "corporation surtax net income" in subsec. (a), to impose a tax rate of 22% on surtax net incomes over \$25,000, in subsec. (b), and to add subsec. (c).

Subsec. (b) (1) amended by Act Jan. 3, 1951, to increase the surtax rate 2 percentage points from 20 per centum to 22 per centum.

1950 Amendment. Act Sept. 23, 1950, amended section generally to redefine

term "corporation surtax net income", and to increase the surtax rate.

1945 Amendment. Subsec. (a) amended by Act Nov. 8, 1945, § 122(g) (3), which struck out "minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e) and", and struck out "(computed by limiting such credit to 85 per centum of the net income reduced by the credit for income subject to the tax imposed by Subchapter E of Chapter 2 in lieu of 85 per centum of the adjusted net income so reduced).".

Subsec. (b) amended generally by Act Nov. 8, 1945, § 121(a), which decreased the corporation surtax.

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1941 Amendment. Act Sept. 20, 1941, amended section in its entirety.

1940 Amendment. First sentence amended in its entirety by Act Oct. 8, 1940.

Effective Date of 1951 Amendments. Amendment of section generally as applicable only with respect to taxable years beginning after Mar. 31, 1951, and to taxable years beginning on Jan. 1, 1951, and ending on Dec. 31, 1951, see note set out under section 13 of I.R.C. 1939.

Section 201(e) of Act Jan. 3, 1951, provided that the amendments of subsec. (b) (1) of this section and sections 207 (a) (3) (A) (ii), 362(b) (4), and 421(a) (1) of I.R.C.1939 should be applicable with respect to taxable years beginning on or after July 1, 1950.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1950, see note set out under section 13 of I.R.C. 1939.

Effective Date of 1945 Amendments. Sections 121(d) and 122(g) (3) of Act Nov. 8, 1945, provided that the amendments of this section were made applicable with respect to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1940 Amendment. Section 101(e) of Act Oct. 8, 1940, provided that the amendment of this section was made applicable only to taxable years beginning after Dec. 31, 1939.

Dividends Received on Preferred Stock of Private Utility. In case of taxable years beginning before April 1, 1951, any reference in subsec. (a) of this section and section 26(b) of I.R.C.1939 to dividends received on preferred stock of public utility to be construed as referring only to dividends received on the preferred stock of a public utility with respect to which the credit provided in section 26(h) of I.R.C.1939 for dividends paid was allowable, see note under section 26 of I.R.C.1939.

Omission of Former Section. Former section 15 which related to corporate taxes effective for two taxable years, was omitted by Act June 29, 1939, 10 p. m., c. 247, title II, § 201, 53 Stat. 803, which amended sections 13, 14, and 15, to "read as follows" and failed to reenact section 15. The amendment omitting said section was made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said Act.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States"

Similar provisions were contained in the following acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.
1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.
1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Jan. 3, 1951, see 1951 U.S. Code Cong.Service, p. 4027. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong. Service, p. 3053; Nov. 8, 1945, 1945 U.S. Code Cong.Service, p. 814.

PART II—COMPUTATION OF NET INCOME

§ 21. Net income

(a) **Definition.** "Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(b) **Cross-references.** For definition of "adjusted net income" and "normal-tax net income", see section 13. 53 Stat. 9, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 210(a), 53 Stat. 866.

Historical Note

1939 Amendment. Subsec. (b) amended by Act June 29, 1939. Prior to said amendment subsec. read as follows:

"(b) Cross References.

"For definition of 'adjusted net income', see section 13(a); for definition of 'special class net income', see section 14(a)."

Effective Date of 1939 Amendment.

Amendment of subsec. (b) made applicable only with respect to taxable years beginning after Dec. 31, 1939, by section 229 of Act June 29, 1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 22. Gross income

(a) **General definition.** "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.

(b) **Exclusions from gross income.** The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) Life insurance, etc. Amounts received—

(A) under a life insurance contract, paid by reason of the death of the insured; or

(B) under a contract of an employer providing for the payment of such amounts to the beneficiaries of an employee, paid by reason of the death of the employee;

whether in a single sum or otherwise (but if such amounts are held by the insurer, or the employer, under an agreement to pay interest thereon, the interest payments shall be included in gross income). The aggregate of the amounts excludible under subparagraph (B) by all the beneficiaries of the employee under all such contracts of any one employer may not exceed \$5,000.

(2) Annuities, etc.

(A) **In general.** Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chap-

ter or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph. The preceding sentence shall not apply in the case of such a transfer if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor. This subparagraph and paragraph (1) shall not apply with respect to so much of a payment under a life insurance, endowment, or annuity contract, or any interest therein, as, under section 22(k), is includible in gross income;

(B) **Employees' annuities.** If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section 23(p) (1) (B), or if an annuity contract is purchased for an employee by an employer exempt under section 101(6), the employee shall include in his income the amounts received under such contract for the year received except that if the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in subparagraph (A) of this paragraph, the consideration for such annuity being considered the amount contributed by the employee. In all other cases, if the employee's rights under the contract are nonforfeitable except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the income of the employee in the year in which the amount is contributed, which amount together with any amounts contributed by the employee shall constitute the consideration paid for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under subparagraph (A) of this paragraph.

(C) **Joint and survivor annuities.** For purposes of subparagraphs (A) and (B) of this paragraph, where amounts are received by a surviving annuitant under a joint and survivor's annuity contract and the basis of such survivor annuitant's interest is determined under section 113 (a) (5) the consideration paid for such survivor's annuity shall be considered to be an amount equal to such basis.

(3) **Gifts, bequests, devises, and inheritances.** The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this paragraph, if under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property;

(4) **Tax-free interest.** Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, when so required by regulations prescribed by the Commissioner with the approval of the Secretary, submit in the return required by this chapter a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such

information as such regulations may prescribe. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit to the extent they represent deposits made before March 1, 1941) and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by this chapter;

(5) **Compensation for injuries or sickness.** Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 23(x) in any prior taxable year, amounts received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, and amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country;

(6) **Ministers.** The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) **Income exempt under treaty.** Income of any kind, to the extent required by any treaty obligation of the United States;

(8) **Miscellaneous items.** The following items, to the extent provided in section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations;

Compensation of employees of foreign governments.

(9) **Income from discharge of indebtedness.**

In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if the taxpayer, at such time and in such manner as the Secretary by regulations prescribes, makes and files its consent to the regulations prescribed under section 113(b) (3) then in effect. In such case the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this paragraph the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation.

(10) **Income from discharge of indebtedness of a railroad corporation.**

The amount of any income attributable to the discharge, within the taxable year, of any indebtedness of a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended,¹ to the extent that such income is deemed to have been realized by reason of a modification in or cancellation in whole or in part of such indebtedness pursuant to an order of a court in a receivership proceeding or in a proceeding under section 77 of the National Bankruptcy Act, as amended.² In such case the amount of any income of the taxpayer attributable

to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. Paragraph (9) shall not apply with respect to any discharge of indebtedness to which this paragraph applies. This paragraph shall not apply to any discharge occurring in a taxable year beginning after December 31, 1954.

(11) **Improvements by lessee on lessor's property.** Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(12) **Recovery of bad debts, prior taxes, and delinquency amounts.** Income attributable to the recovery during the taxable year of a bad debt, prior tax, or delinquency amount, to the extent of the amount of the recovery exclusion with respect to such debt, tax, or amount. For the purposes of this paragraph:

(A) **Definition of bad debt.** The term "bad debt" means a debt on account of worthlessness or partial worthlessness of which a deduction was allowed for a prior taxable year.

(B) **Definition of prior tax.** The term "prior tax" means a tax on account of which a deduction or credit was allowed for a prior taxable year.

(C) **Definition of delinquency amount.** The term "delinquency amount" means an amount paid or accrued on account of which a deduction or credit was allowed for a prior taxable year and which is attributable to failure to file return with respect to a tax, or pay a tax, within the time required by the law under which the tax is imposed, or to failure to file return with respect to a tax or pay a tax.

(D) **Definition of recovery exclusion.** The term "recovery exclusion", with respect to a bad debt, prior tax, or delinquency amount, means the amount, determined in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, of the deductions or credits allowed, on account of such bad debt, prior tax, or delinquency amount, which did not result in a reduction of the taxpayer's tax under this chapter (not including the tax under section 102) or corresponding provisions of prior revenue laws, reduced by the amount excludible in previous taxable years with respect to such debt, tax, or amount under this paragraph.

(E) **Special rules in case of section 102 tax and personal holding company tax.** In the application of subparagraphs (A), (B), (C), and (D) in determining the tax under section 102 or Subchapter A of Chapter 2, a recovery exclusion allowed for the purposes of Chapter 1 shall be allowed for the purpose of such section or subchapter whether or not the bad debt, prior tax, or delinquency amount resulted in a reduction of the section 102 tax or Subchapter A tax for the prior taxable year; and in the case of a bad debt, prior tax, or delinquency amount not allowable as a deduction or credit for the prior taxable year under Chapter 1 (except section 102) but allowable for the same taxable year under such section or subchapter a recovery exclusion shall be allowable for the purposes of such section or subchapter if such bad debt, prior tax, or delinquency amount did not result in a reduction of the tax under such section 102 or such Subchapter A. As used in this subparagraph references to Chapter 1, section 102, and Subchapter A in the case of taxable years not subject to the Internal Revenue Code, shall be held to be made to corresponding provisions of prior revenue Acts.

(13) Additional allowance for certain members of the armed forces.

(A) Enlisted personnel. Compensation received for active service as a member below the grade of commissioned officer in the armed forces of the United States for any month during any part of which such member—

(i) served in a combat zone after June 24, 1950, and prior to January 1, 1955, or

(ii) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone prior to January 1, 1955; but this clause shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subparagraph (C) (iii) of this paragraph.

(B) Commissioned officers. So much of the compensation as does not exceed \$200 received for active service as a commissioned officer in the armed forces of the United States for any month during any part of which such officer—

(i) served in a combat zone after June 24, 1950, and prior to January 1, 1955, or

(ii) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone prior to January 1, 1955; but this clause shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subparagraph (C) (iii) of this paragraph.

(C) Definitions. For the purposes of this paragraph—

(i) the term "commissioned officer" does not include a commissioned warrant officer;

(ii) the term "combat zone" means any area which the President of the United States by Executive Order designates, for the purposes of this paragraph, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat;

(iii) service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone, except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195; and

(iv) the term "compensation" does not include pensions and retirement pay.

(14) Mustering-out payments for military and naval personnel. Amounts received during the taxable year as mustering-out payments with respect to service in the military or naval forces of the United States.

(15) Payments to encourage exploration, development, and mining for defense purposes. An amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, and the forgiveness or discharge of any of such amount. Any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but upon the repayment of any portion of any such grant or loan which has been

expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment.

(16) Sports programs conducted for the American National Red Cross. In the case of a taxpayer which is a corporation primarily engaged in the furnishing of sports programs, amounts received as proceeds from a sports program conducted by the taxpayer if—

(A) the taxpayer agrees in writing with the American National Red Cross to conduct such sports program exclusively for the benefit of the American National Red Cross;

(B) the taxpayer turns over to the American National Red Cross the proceeds from such sports program, minus the expenses paid or incurred by the taxpayer (i) which would not have been so paid or incurred but for such sports program, and (ii) which would be allowable as deductions under section 23 (a) (1) (A) but for the last sentence thereof; and

(C) the facilities used for such program are not regularly used during the taxable year for the conduct of sports programs to which this paragraph applies.

As used in this paragraph, the term "proceeds from such sports program" includes all amounts paid for admission to the sports program, plus all proceeds received by the taxpayer from such program or activities carried on in connection therewith.

(c) Inventories. Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) Method of inventorying goods. (1) A taxpayer may use the following method (whether or not such method has been prescribed under subsection (c)) in inventorying goods specified in the application required under paragraph (2):

(A) Inventory them at cost;

(B) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof, and second, those acquired in the taxable year; and

(C) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(2) The method described in paragraph (1) may be used—

(A) Only in inventorying goods (required under subsection (c) to be inventories) specified in an application to use such method filed at such time and in such manner as the Commissioner may prescribe; and

(B) Only if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer has used no procedure other than that specified in subparagraphs (B) and (C) of paragraph (1) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in paragraph (1) is to be used, for the purpose of a report or statement covering such taxable year (i) to shareholders, partners, or other proprietors, or to beneficiaries, or (ii) for credit purposes.

(3) The change to, and the use of, such method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income.

(4) In determining income for the taxable year preceding the taxable year for which such method is first used, the closing inventory of such preceding year of the goods specified in such application shall be at cost.

(5) If a taxpayer, having complied with paragraph (2), uses the method described in paragraph (1) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(A) With the approval of the Commissioner a change to a different method is authorized; or

(B) The Commissioner determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in subparagraph (B) of paragraph (1) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (i) to shareholders, partners, or other proprietors, or beneficiaries, or (ii) for credit purposes; and requires a change to a method different from that prescribed in paragraph (1) beginning with such subsequent taxable year or any taxable year thereafter.

In either of the above cases, the change to, and the use of, the different method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income.

(6) Involuntary liquidation and replacement of inventory.

(A) **Adjustment of net income and resulting tax.**—Years beginning prior to January 1, 1948. If, for any taxable year beginning after December 31, 1940, and prior to January 1, 1948, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it is established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in subparagraph (B), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1953, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be adjusted as follows:

(i) Increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost; or

(ii) Decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation.

The taxes imposed by this chapter and by chapter 2 for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

(B) **Definition of involuntary liquidation.** The term "involuntary liquidation", as used in this paragraph, means the sale or other disposition of goods inventoried under the method described in this subsection, either voluntary or involuntary, coupled with a failure on the part of the taxpayer to purchase, manufacture, or otherwise produce and have on

hand at the close of the taxable year in which such sale or other disposition occurred such goods as would, if on hand at the close of such taxable year, be subject to the application of the provisions of this subsection, if such failure on the part of the taxpayer is due, directly and exclusively, (i) to enemy capture or control of sources of limited foreign supply; (ii) to shipping or other transportation shortages; (iii) to material shortages resulting from priorities or allocations; (iv) to labor shortages; or (v) to other prevailing war conditions beyond the control of the taxpayer.

(C) **Replacements.** If, in the case of any taxpayer subject to the provisions of subparagraph (A), the closing inventory of the taxpayer for a taxable year, subsequent to the year of involuntary liquidation but prior to the complete replacement of the goods so liquidated, reflects an increase over the opening inventory of such goods for the taxable year, the goods reflecting such increase shall be considered, in the order of their acquisition, as having been acquired in replacement of the goods most recently liquidated (whether or not in a year of involuntary liquidation) and not previously replaced, and if the liquidation was an involuntary liquidation shall be taken into purchases and included in the closing inventory of the taxpayer for the year of replacement at the inventory cost basis of the goods replaced.

(D) **Election irrevocable.** An election by the taxpayer to have the provisions of this paragraph apply, once made, shall be irrevocable and shall be binding for the year of the involuntary liquidation and for all determinations for prior and subsequent taxable years insofar as they are related to the year of liquidation or replacement.

(E) **Adjustment in certain cases.** If the adjustments specified in subparagraph (A) are, within respect to any taxable year, prevented, on the date of the filing of the income tax return of the taxpayer for the year of the replacement, or within three years from such date, by any provision or rule of law (other than this subparagraph and other than section 3761, relating to compromises), such adjustments shall nevertheless be made if, in respect of the taxable year for which the adjustment is sought, a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within three years after the date of the filing of the income tax return for the year of replacement. If, at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized by this paragraph shall be limited to the increase or decrease of the tax imposed by this chapter and Chapter 2 previously determined for such taxable year which results solely from the effect of subparagraph (A), and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if, on the date of the filing of the income tax return for the year of the replacement, three years remain before the expiration of the periods of limitation upon assessment or the filing of claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 734(d). The amount to be assessed and collected under this paragraph in the same manner as if it were a deficiency or to be credited or refunded in the same manner as if it were an overpayment shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of subparagraph (A). Such amount, if paid, shall not be recovered by a claim or suit for refund, or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of subparagraph (A).

(F) Years ending after June 30, 1950, and prior to January 1, 1954.

(i) **Adjustment of net income and resulting tax.** If, for any taxable year ending after June 30, 1950, and prior to January 1, 1954, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it is established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in subparagraph (B) (as modified by clause (ii) of this subparagraph), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1956, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidations shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter and by chapter 2 for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

(ii) **Definition of involuntary liquidation.** For the purposes of this subparagraph the term "involuntary liquidation" shall have the meaning given to it in subparagraph (B) and, in addition, it shall mean a failure, as referred to in that subparagraph, on the part of the taxpayer due, directly and exclusively, to disruption of normal trade relations between countries. For the purposes of this subparagraph the words "enemy" and "war", as used in subparagraph (B), shall be interpreted, pursuant to regulations prescribed by the Secretary, in such a way as to apply to circumstances, occurrences and conditions, lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war.

(iii) **Application of subparagraphs (C) and (E).** Subparagraphs (C) and (E), to the extent that they refer to any taxpayer subject to the provisions of subparagraph (A) or to the adjustments specified in or resulting from the effect of subparagraph (A), shall be as applicable to a taxpayer subject to the provisions of this subparagraph or to adjustments specified in or resulting from the effect of this subparagraph as though they specifically referred to this subparagraph. If, for any taxable year ending after June 30, 1950, and prior to January 1, 1953, subparagraph (C) is applicable with respect to involuntary liquidations of goods of the same class subject to the provisions of both subparagraph (A) and this subparagraph, the involuntary liquidations of such goods subject to the provisions of this subparagraph shall be considered for the purpose of subparagraph (C) as having occurred prior to the involuntary liquidations of such goods subject to the provisions of subparagraph (A). For the purpose of this clause, and with respect to the taxable years covered by this subparagraph, the reference in subparagraph (E) to section 734 (d) shall be taken as a reference to section 452 (d).

(e) **Distributions by corporations.** Distributions by corporations shall be taxable to the shareholders as provided in section 115.

(f) **Determination of gain or loss.** In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111.

(g) **Gross income from sources within and without United States.**

For computation of gross income from sources within and without the United States, see section 119.

(h) **Foreign personal holding companies.**

For provisions relating to gross income of foreign personal holding companies and of their shareholders, see section 334.

(i) **Consent dividends.**

For inclusion in gross income of amounts specified in shareholders' consents, see section 28.

(j) **Income from mortgages made or obligations issued by joint stock land banks.**

For taxable status of income derived from mortgages made or obligations issued by joint stock land banks, see section 3799.

(k) **Alimony, etc., income.** In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. This subsection shall not apply to that part of any such periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. In case any such periodic payment is less than the amount specified in the decree or written instrument, for the purpose of applying the preceding sentence, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support. Installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree or instrument shall not be considered periodic payments for the purposes of this subsection; except that an installment payment shall be considered a periodic payment for the purposes of this subsection if such principal sum, by the terms of the decree or instrument, may be or is to be paid within a period ending more than 10 years from the date of such decree or instrument, but only to the extent that such installment payment for the taxable year of the wife (or if more than one such installment payment for such taxable year is received during such taxable year, the aggregate of such installment payments) does not exceed 10 per centum of such principal sum. For the purposes of the preceding sentence, the portion of a payment of the principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be considered an installment payment for the taxable year in which it is received. (In cases where such periodic payments are attributable to property of an estate or property held in trust, see section 171 (b).)

(l) **Income of decedents.** For inclusion in gross income of certain amounts which constituted gross income in respect of a decedent, see section 126.

(m) **Services of child**

(1) Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(2) All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of paragraph (1) shall be deemed to have been paid or incurred by the child.

(3) For the purposes of this subsection, the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

(4) Any tax assessed against the child, to the extent attributable to amounts includible in the gross income of the child and not of the parent solely by reason of paragraph (1), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(n) **Definition of "adjusted gross income".** As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) **Trade and business deductions.** The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) **Expenses of travel and lodging in connection with employment.** The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(3) **Reimbursed expenses in connection with employment.** The deductions allowed by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer;

(4) **Deductions attributable to rents and royalties.** The deductions (other than those provided in paragraph (1), (5), or (6)) allowed by section 23 which are attributable to property held for the production of rents or royalties;

(5) **Certain deductions of life tenants and income beneficiaries of property.** The deductions (other than those provided in paragraph (1)) for depreciation and depletion, allowed by section 23 (l) and (m) to a life tenant of property or to an income beneficiary of property held in trust;

(6) **Losses from sales or exchange of property.** The deductions (other than those provided in paragraph (1)) allowed by section 23 as losses from the sale or exchange of property; and

(7) **Long-term capital gains.** The deduction allowed by section 23 (ee).

(o) **Dealers in tax-exempt securities.**

(1) **Adjustment for bond premium.** In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in paragraph (2) (A)) primarily for sale to customers in the ordinary course of his trade or business—

(A) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in paragraph (2) (B)) during such year shall be reduced by an amount equal to the amortizable bond premium that would be disallowed as a deduction for such year pursuant to section 125 (a) (2) if the definition in section 125 (d) of the term "bond" did not exclude such short-term municipal bond; or

(B) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at

cost, and the short-term municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this subparagraph) of the short-term municipal bond shall be reduced by the amount of the adjustment that would be required under section 113 (b) (1) (H) if the definition in section 125 (d) of the term "bond" did not exclude such short-term municipal bond.

(2) Definitions. For the purposes of paragraph (1)—

(A) The term "short-term municipal bond" means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludible from gross income; but such term does not include such an obligation if (i) it is sold or otherwise disposed of by the taxpayer within thirty days after the date of its acquisition by him, or (ii) its earliest maturity or call date is a date more than five years from the date on which it was acquired by the taxpayer.

(B) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of (i) the inventory value of the opening inventory for such year and (ii) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year. 53 Stat. 9, amended Apr. 12, 1939, c. 59, Title I, §§ 1, 3, 53 Stat. 574, 575; June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 215(a), 219(a), 53 Stat. 875, 877; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 110(a), 111(a), 112(a), 113, 114(a, b), 115(a), 116(a), 117, 118(a, b), 119, 120(a, d), 127(d), 134(c), 162(c), 56 Stat. 808, 809, 811, 812, 814, 816, 818, 826, 830, 866; June 9, 1943, 7 p. m., E. W. T., c. 120, § 7(a), 57 Stat. 149; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 109, 110(a), 58 Stat. 33, 34; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, §§ 7, 8(a), 11(d), 58 Stat. 235, 241; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, §§ 141(a), 152, 59 Stat. 571, 574; July 31, 1946, c. 717, § 1, 60 Stat. 749; June 25, 1947, c. 143, § 3, 61 Stat. 179; Aug. 8, 1947, c. 515, §§ 7, 8, 61 Stat. 918; Aug. 17, 1949, c. 517, § 3, 63 Stat. 667; Sept. 5, 1950, c. 851, § 1(a), 64 Stat. 593; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 201, 202(a), 203(a), 64 Stat. 927; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 306, 64 Stat. 1220; Jan. 11, 1951, c. 1227, § 1(a, b), 2(a), 64 Stat. 1244; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 302(a), 303(a), 304, 305(a, b), 306(a), 322(c) (1), 65 Stat. 483; July 8, 1952, c. 588, § 1, 66 Stat. 442; Aug. 7, 1953, c. 346, § 1, 67 Stat. 471.

1 Probably should read "77(m)" which is section 205(m) of Title 11, Bankruptcy.

2 Section 205 of Title 11, Bankruptcy.

* So in original. Probably should read "subparagraph".

Historical Note

1953 Amendment. Subsec. (b) (13) amended by Act Aug. 7, 1953, to extend its provisions for one year, from Jan. 1, 1954 to Jan. 1, 1955.

1952 Amendment. Subsec. (b) (16) added by Act July 8, 1952.

1951 Amendments. Subsec. (b) (1) amended by Act Oct. 21, 1951, § 302(a), to include within the exclusion of life insurance proceeds amounts received under a life insurance contract taken out by an employer on an employee.

Subsec. (b) (2) amended by Act Oct. 20, 1951, § 303(a), which added subparagraph (C).

Subsec. (b) (9) amended by Act Oct. 20, 1951, § 304(a), to strike out "if the tax-

payer makes and files at the time of filing the return, in such manner as the Commissioner, with the approval of the Secretary, by regulations prescribes, its consent" and insert in lieu thereof "if the taxpayer * * * files its consent," and to strike out the last sentence which read "This paragraph shall not apply to any discharge occurring before the date of the enactment of the Revenue Act of 1939 [June 29, 1939], or in a taxable year beginning after December 31, 1951."

Subsec. (b) (10) amended by Act Oct. 20, 1951, § 304(a), to substitute "December 31, 1954" for "December 31, 1951".

Subsec. (b) (13) amended by Act Oct. 20, 1951, § 305(a), (b), to bring within its provisions personnel of the armed

forces who serve in a combat zone after June 24, 1950 and prior to Jan. 1, 1954, and to redefine "such zone" in subparagraph (C) (iii).

Subsec. (b) (15) added by Act Jan. 3, 1951.

Subsec. (d) (6) (A) catchline amended to read as now set out by Act Jan. 11, 1951, § 1(a).

Subsec. (d) (6) (A) amended by Act Jan. 11, 1951, § 1(b), which substituted "January 1, 1953" in lieu of "January 1, 1951".

Subsec. (d) (6) (F) (iii) amended by Act Oct. 20, 1951, § 306(a), which struck out last sentence "For this purpose, and with respect to the taxable years covered by this subparagraph, the reference in subparagraph (E) to section 734 (d) shall be taken as a reference to section 450(d)" and inserted new last sentence.

Subsec. (d) (6) (F) added by Act Jan. 11, 1951, § 2(a).

Subsec. (n) (7) added by Act Oct. 20, 1951, § 322(c) (1).

1950 Amendments. Subsecs. (b) (9) and (b) (10) amended by Act Sept. 23, 1950, § 201, which substituted "December 31, 1951," in lieu of "December 31, 1950".

Subsec. (b) (13) amended by Act Sept. 23, 1950, § 202(a), to grant an exclusion from gross income in case of compensation received prior to Jan. 1, 1952, for service as a member of the armed forces based on time spent in a combat zone during the taxable year in which the compensation was received.

Subsec. (d) (6) (A) amended by Act Sept. 5, 1950, to allow the taxpayer to make the required election at such time and in such manner and subject to such regulations as the Commission with the approval of the Secretary may prescribe.

Subsec. (o) added by Act Sept. 23, 1950, § 203(a).

1949 Amendment. Subsec. (b) amended by Act Aug. 27, 1949 which inserted "1950" in lieu of "1949" in subdivs. (9) and (10).

1947 Amendment. Subsec. (b) (9), (10) amended by Act June 25, 1947, which extended for two years, from 1947 to 1949, the effective period of those provisions relating to the exclusion of income from the discharge of indebtedness.

Subsec. (b) (13) amended by Act Aug. 8, 1947, § 7, by limiting the application of the exclusions of this section to compensation for active service received prior to Jan. 1, 1948, rather than prior to the termination of the war as proclaimed by the President.

Subsec. (d) (6) (A) amended by Act Aug. 8, 1947, § 8, which makes its provisions applicable in cases where the involuntary liquidation occurred in a taxable year beginning prior to Jan. 1, 1948 (instead of in a taxable year be-

ginning prior to the termination of the war), and the replacement occurred in a subsequent taxable year ending prior to Jan. 1, 1951 (instead of a taxable year ending not more than 3 years after the termination of the war).

1946 Amendment. Subsec. (b) (9), (10) amended by Act July 31, 1946, which extended for one more year the effective period of these provisions relating to the exclusion of income from the discharge of indebtedness.

1945 Amendment. Subsec. (b) (9) and (10) amended by Act Nov. 8, 1945, § 152, which struck out "1945" in each of such paragraphs and inserted "1946" in lieu thereof.

Subsec. (b) (13) amended generally by Act Nov. 8, 1945, § 141(a).

1944 Amendment. Subsec. (b) (4) amended by Act May 29, 1944, which incorporated technical changes necessitated by amendment of section 25 of this title.

Subsec. (b) (14) added by Act Feb. 25, 1944.

Subsec. (d) (6) (A) amended by Act Feb. 25, 1944, which struck out "December 31, 1941" and inserted "December 31, 1940", and inserted "(or, with respect to taxable years beginning in 1941, at any time within the six months period following the date of the enactment of the Revenue Act of 1943)" following "taxpayer's income tax return for such year" in the first sentence, and amended generally the next to last sentence which commences "The taxes imposed".

Subsec. (d) (6) (C) amended by Act Feb. 25, 1944, which inserted "taken into purchases and" following "involuntary liquidation shall be", and inserted "closing" preceding "inventory of the taxpayer for the year of replacement".

Subsec. (d) (6) (D) amended by Act Feb. 25, 1944, which struck out "for subsequent taxable years" and inserted in lieu thereof "for prior and subsequent taxable years".

Subsec. (d) (6) (E) amended by Act Feb. 25, 1944, which struck out "Subchapter E of" preceding "Chapter 2" in second sentence.

Subsecs. (m) and (n) added by Act May 29, 1944.

1943 Amendment. Subsec. (b) (13) amended by Act June 9, 1943, which among other changes made a blanket allowance of \$1500, in lieu of former allowance of \$250, for single, and \$300, for married persons or heads of families.

1942 Amendment. Subsecs. (b) (2-5), (9); (d) (2) (B), (5) (B) amended and subsecs. (b) (2) (B), (10-13); (d) (6); (k) and (l) added by Act Oct. 21, 1942.

1939 Amendment. Subsec. (a) amended by sections 1 and 3 of the Act of Apr. 12, 1939, which inserted words "including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumental-ity of any one or more of the foregoing"

after the words "compensation for personal service," and by adding the last sentence requiring the compensation of judges of courts of the United States who took office on or before June 6, 1932, to be included in gross income.

Subsec. (b) (9) added by Act June 29, 1939.

Subsec. (d) amended by Act June 29, 1939. It was enacted without a catchline, which has been supplied by editor.

Amendment to 1938 Act. Act June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 219(c), 53 Stat. 877, provided as follows:

"(c) Amendment to 1938 Act.—Section 22(d) of the Revenue Act of 1938 (relating to inventories in certain industries) is amended to read as follows:

"(d) If the inventory method described in section 22(d) (1), as amended, of the Internal Revenue Code [1939] is used for the first taxable year beginning after December 31, 1938, then, in determining income for the preceding taxable year, the closing inventory of such year of the goods specified in the application under section 22(d) (2), as amended, of such Code [1939] shall be at cost."

Effective Date of 1952 Amendment. Section 3 of Act July 3, 1952 provided in part that the amendment of subsection (b) should apply only with respect to sports programs conducted after July 8, 1952, under agreements entered into after such date.

Effective Date of 1951 Amendments. Amendments of subsec. (b) (1) and (2) were made applicable with respect to taxable years beginning after Dec. 31, 1951, by sections 302(b) and 303(c) of Act Oct. 20, 1951. Amendment of subsec. (b) (9) was made effective with respect to discharges of indebtedness occurring within taxable years ending after 1950 by section 304(a) of said Act Oct. 20, 1951. Amendment of subsec. (b) (10) carried no specific effective date. Amendments of subsec. (b) (13) (A), (B), (C) (iii) were made applicable to taxable years ending after June 24, 1950, by section 305(d) of said Act Oct. 20, 1951. Amendment of subsec. (d) (6) (F) (iii) was made applicable with respect to taxable years ending after June 30, 1950, by section 306(b) of Act Oct. 20, 1951. Amendment of subsec. (n) by addition of paragraph (7) was made applicable only with respect to taxable years beginning on or after Oct. 20, 1951, by section 322 (d) of Act Oct. 20, 1951.

Section 1(c) of Act Jan. 11, 1951, provided that the amendments of the catchline of subpar. (A) and subpar. (A) of subsec. (d) (6) by section 1(a), (b), of said Act Jan. 11, 1951, should be applicable with respect to taxable years beginning after Dec. 31, 1940.

The addition of subpar. (F) to subsec. (d) (6) by section 2(a) of said Act Jan. 11, 1951, was made applicable with respect to taxable years ending after

June 30, 1950, by section 2(b) of said Act Jan. 11, 1951.

Section 306 of Act Jan. 3, 1951, provided in part that the amendment of this subsection should be effective with respect to taxable years beginning after Dec. 31, 1950.

Effective Date of 1950 Amendments. Section 203(c) of Act Sept. 23, 1950, provided that amendments to subsec. (o) of this section and sections 113(b) (1) (I) and 125(e) [I.R.C.1939] should be applicable to taxable years ending after June 30, 1950, but in the case of a taxable year beginning before and ending after such date the amendments should apply only with respect to obligations acquired after such date.

Section 1(b) of Act Sept. 5, 1950, provided that the amendment made by section 1(c) of said Act Sept. 5, 1950 shall be applicable with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1945 Amendment. Amendment of subsec. (b) (13) by Act Nov 8, 1945, § 141(a) was made applicable to taxable years by subsec. (b) thereof, reads as follows: "Subparagraph (A) of section 22(b) (13), as amended by subsection (a) of this section, shall be applicable with respect to taxable years beginning after December 31, 1942; subparagraph (B) thereof shall be applicable with respect to taxable years beginning after December 31, 1940."

Effective Date of 1944 Amendments. Amendment of subsec. (b) (4), and addition of subsecs. (m) and (n) by Act May 29, 1944, §§ 7, 8(a), 11(d), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Addition of par. (14) to subsec. (b) by Act Feb. 25, 1944, § 109, was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Amendments of subsec. (d) (6) (A), (d) (6) (C), (d) (6) (D), and (d) (6) (E) by Act Feb. 25, 1944, § 110(a), were made applicable to taxable years beginning after Dec. 31, 1940, by section 110(b) thereof.

Effective Date of 1943 Amendment. Amendment of subsec. (b) (13) by Act June 9, 1943, was made effective with respect to taxable years beginning after December 31, 1942, by section 7(b) thereof.

Effective Date of 1942 Amendment. Amendments by Act Oct. 21, 1942, §§ 127, 113-115, 117, 119 to subsecs. (b) (6, 9, 11, 13) and (d) (6) were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof. Effective dates of other amendments by said Act Oct. 21, 1942, are noted in paragraphs below.

Amendment of subsec. (b) (2) by Act Oct. 21, 1942, § 110(a), adding new sentence at end of par., was made applicable to taxable years beginning after Dec. 31, 1940, by section 110(b) thereof.

Amendment of subsec. (b) (2), inserting a new heading for (A) and adding a

new sentence at the end thereof, and amendment adding subsec. (k), both by Act Oct. 21 1942, § 120(a) (d) were made effective by section 120(g) thereof as follows: "(g) The amendments made by this section [to sections 22(b) (2), (k), 23(u), 25(b) (2) (A), 171 and 3797(a) (17)] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that if the first taxable year beginning after December 31, 1941, of the husband does not begin on the same day as the first taxable year beginning after December 31, 1941, of the wife, such amendments shall first become applicable in the case of the husband on the first day of the wife's first taxable year beginning after December 31, 1941, regardless of the taxable year of the husband in which such day falls."

Amendment of subsec. (b) (2) by Act Oct. 21 1942, § 162(c), adding subpar. (B) was made effective by section 162(d) thereof, as amended by Acts Dec. 17, 1943, c. 346, § 3, 57 Stat. 602; Dec. 20, 1944, c. 616, § 2, 58 Stat. 830, as follows: "(d) The amendments made by this section [to sections 22(b) (2) (B), 23(p), 165 of I.R.C. 1939, and section 80a-3(c) (13) of Title 15] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165(a) (3), (4), (5), and (6) until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942 and ending June 30, 1945, if the provisions thereof satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943."

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p) (1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p) (1), as amended by this section, which the number of months

after August 31, 1942, in the taxable year bears to twelve.

"(2) A stock bonus, pension, profit-sharing, or annuity plan—

"(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

"(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period."

Amendment of subsec. (b) (3) by Act Oct. 21, 1942, § 111(a), was made effective by section 111(e) thereof as follows: "(e) The amendments made by this section shall be applicable only with respect to taxable years beginning after December 31, 1941; except that in the case of income paid, credited or to be distributed or amounts paid, credited or to be distributed by an estate or trust the amendments made by this section shall be applicable only with respect to such income and such amounts paid, credited or to be distributed on or after the beginning of the first taxable year of the estate or trust, as the case may be, beginning after December 31, 1941."

Amendment of subsec. (b) (4) by Act Oct. 21 1942, § 112(a), inserting words "to the extent they represent deposits made before March 1, 1941" was made effective as of March 1, 1941, by section 112(c) thereof.

Amendment of subsec. (b) by Act Oct. 21, 1942, § 114(b), adding par. (10), was made applicable to taxable years beginning after Dec. 31, 1939, by section 114(c) thereof.

Amendment of subsec. (b) by Act Oct. 21, 1942, § 116(a), adding par. (12), was made applicable to taxable years beginning after Dec. 31, 1938, by section 116(b) thereof.

Amendments of subsec. (d), pars. (2) (B) and (5) (B) by Act Oct. 21, 1942, § 118(a, b), were made applicable to taxable years beginning after Dec. 31, 1938, by section 118(c) thereof.

Amendment adding subsec. (f) by Act Oct. 21, 1942, § 134(c), was made applicable to taxable years ending after Dec. 31, 1942, by section 134(f) thereof.

Effective Date of 1939 Amendment. Act June 29, 1939, was made applicable to taxable years beginning after Dec. 31, 1938, by sections 215(c) and 219(b) thereof.

Credits or Refunds for 1941 and 1942. Act Nov. 8, 1945, § 141(c), provided: "If at any time prior to January 1, 1947, the allowance of a credit or refund of an overpayment of the tax for any taxable year beginning after December 31, 1940, and before January 1, 1943, is otherwise prevented by the operation of any law or rule of law (other than section 3761, relating to compromises), a credit or refund of the overpayment of such tax to the extent that the overpayment is attributable to the enactment of this section may, nevertheless, be allowed or made if a claim therefor is filed before January 1, 1947."

Recovery Under Prior Revenue Acts. Section 116(c) of Act Oct. 21, 1942, provided as follows: "(c) For the purposes of the Revenue Act of 1938 or any prior revenue Act, the amendments made to the Internal Revenue Code [1939] by subsection (a) of this section [adding subpar. (12) to subsec. (b)] shall be effective as if they were a part of each such revenue Act on the date of its enactment."

tive as if they were a part of each such revenue Act on the date of its enactment."

Public Salary Tax Act. Complete original text of The Public Salary Tax Act, Apr. 12, 1939, c. 59, Title II, §§ 201-211, 53 Stat. 575-577 as amended by Acts June 25, 1940, c. 419, Title IV, § 401, 54 Stat. 527; Oct. 21, 1942, c. 619, Title V, § 509(b), 56 Stat. 967, eff. Apr. 12, 1939, see volumes "Title 26—Internal Revenue Acts."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

EXECUTIVE ORDER NO. 10195

Dec. 21, 1950, 15 F.R. 9177

DESIGNATION OF KOREA AND WATERS ADJACENT THERETO AS A COMBAT ZONE

Pursuant to the authority vested in me by section 22(b) (13) of the Internal Revenue Code, as amended by section 202(a) of the Revenue Act of 1950, approved September 23, 1950 (Public Law 814, 81st Congress) [subsection (b) (13) of this section], there is hereby designated, for the purposes of paragraph (13) of section 22(b) of the Internal Revenue Code [subsection (b) (13) of this section], as an area in which armed forces of the United States have engaged in combat:

Korea, including the waters adjacent thereto within the following-described limits: From a point at Lat. 39°30' N, Long. 122°45' E southward to Lat. 33° N, Long. 122°45' E; thence eastward to Lat. 33° N, Long. 127°55' E; thence northeastward to Lat. 37°05' N, Long. 133° E; thence northward to Lat. 40°40' N, Long. 133° E; thence northwestward to a point on the east coast of Korea at the juncture of Korea with the U.S.S.R.

The date of the commencing of combatant activities in such area is hereby designated as June 27, 1950.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 7, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2186. See, also, Acts July 8, 1952, 1952 U.S. Code Cong. and Adm. News, p. 1997; Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053; Aug. 27, 1949, 1949 U.S. Code Cong. Service, p. 1876; Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1668; June 25, 1947, 1947 U.S. Code Cong. Service, p. 1211; July 31, 1946, 1946 U.S. Code Cong. Service, p. 1385; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 23. Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) Expenses.

(1) Trade or business expenses.

(A) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in

the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity. In the case of any sports program conducted for the benefit of the American National Red Cross, expenses described in section 22 (b) (16) (B) shall be allowable under this subparagraph only to the extent that such expenses exceed the amount excluded from gross income by section 22 (b) (16).

(B) **Corporate charitable contributions.** No deduction shall be allowable under subparagraph (A) to a corporation for any contribution or gift which would be allowable as a deduction under subsection (q) were it not for the 5 per centum limitation therein contained and for the requirement therein that payment must be made within the taxable year.

(C) **Expenditures for advertising and good will.** If a corporation has, for the purpose of computing its excess profits tax credit under Chapter 2E, or subchapter D of this Chapter, claimed the benefits of the election provided in section 733 or section 451, as the case may be, no deduction shall be allowable under subparagraph (A) to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451, as the case may be, may be regarded as capital investments.

(2) **Non-trade or non-business expenses.** In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

(b) **Interest.** All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

(c) **Taxes generally.**

(1) **Allowance in general.** Taxes paid or accrued within the taxable year, except—

(A) Federal income taxes;

(B) war-profits and excess-profits taxes imposed by Title II of the Revenue Act of 1917, Title III of the Revenue Act of 1918, Title III of the Revenue Act of 1921, section 216 of the National Industrial Recovery Act, section 702 of the Revenue Act of 1934, or Subchapter E of Chapter 2, or by any such provisions as amended or supplemented;

(C) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States, if the taxpayer chooses to take to any extent the benefits of section 131;

(D) estate, inheritance, legacy, succession, and gift taxes;

(E) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges; and

(F) Federal import duties, and Federal excise and stamp taxes (not described in subparagraph (A), (B), (D), or (E)), but this subsection shall not prevent such duties and taxes from being deducted under subsection (a).

(2) **Repealed.** Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 105(c) (2), 56 Stat. 806.

(3) **Gasoline and retail sales taxes.** In the case of a tax imposed by any State, Territory, District, or possession of the United States, or any political subdivision thereof, upon persons engaged in selling tangible personal property at retail, or upon persons selling gasoline or other motor vehicle fuels either at wholesale or retail, which is measured by the gross sales price or the gross receipts from the sale or which is a stated sum per unit of such property sold, or upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services, if the amount of such tax is separately stated, then to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his vendor such amount shall be allowed as a deduction in computing the net income of such consumer as if such amount constituted a tax imposed upon and paid by such consumer.

(d) **Taxes of shareholder paid by corporation.** The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(e) **Losses by individuals.** In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

(f) **Losses by corporations.** In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

(g) **Capital losses.**

(1) **Limitation.** Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117.

(2) **Securities becoming worthless.** If any securities (as defined in paragraph (3) of this subsection) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

(3) **Definition of securities.** As used in paragraph (2) 1 of subsection the term "securities" means (A) shares of stock in a corporation, and (B) rights to subscribe for or to receive such shares.

(4) **Stock in affiliated corporation.** For the purposes of paragraph (2) stock in a corporation affiliated with the taxpayer shall not be deemed a capital asset. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:

(A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and

(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the company in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets

sold), annuities, or gains from sales or exchanges of stocks and securities; and

(C) the taxpayer is a domestic corporation.

(h) **Wagering losses.** Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(i) **Basis for determining loss.** The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (e) or (f), and for bad debts, to be allowed under subsection (k), shall be the adjusted basis provided in section 113(b) for determining the loss from the sale or other disposition of property.

(j) **Loss on wash sales of stock or securities.**

For disallowance of loss deduction in the case of sales of stock or securities where within thirty days before or after the date of the sale the taxpayer has acquired substantially identical property, see section 118.

(k) **Bad debts.**

(1) **General rule.** Debts which become worthless within the taxable year; or (in the discretion of the Commissioner) a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. This paragraph shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to a debt evidenced by a security as defined in paragraph (3) of this subsection. This paragraph shall not apply in the case of a taxpayer, other than a corporation, with respect to a non-business debt, as defined in paragraph (4) of this subsection. In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of (A) the amount of its net income for the taxable year, computed without regard to this subsection, or (B) the amount by which 12 per centum of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year.

(2) **Securities becoming worthless.** If any securities (as defined in paragraph (3) of this subsection) become worthless within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 104, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

(3) **Definition of securities.** As used in paragraphs (1), (2), and (4) of this subsection the term "securities" means bonds, debentures, notes, or certificates, or other evidences of indebtedness, issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form.

(4) **Non-business debts.** In the case of a taxpayer, other than a corporation, if a non-business debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months. The term "non-business debt" means a debt other

than a debt evidenced by a security as defined in paragraph (3) and other than a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(5) **Securities of affiliated corporations.** Bonds, debentures, notes or certificates, or other evidences of indebtedness issued with interest coupons or in registered form by any corporation affiliated with the taxpayer shall not be deemed capital assets for the purposes of paragraph (2) and paragraph (1) shall apply with respect to such debt except that no such deduction shall be allowed under such paragraph with respect to any such debt which is recoverable only in part. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:

(A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and

(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the company in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, or gains from sales or exchanges of stocks and securities; and

(C) the taxpayer is a domestic corporation.

(6) **Exception.** This subsection shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to debts owed by (A) any political party, (B) any national, state, or local committee of any political party, or (C) any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of Presidential or Vice Presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected. For the purpose of this paragraph, the terms "contributions" and "expenditure" shall have the meanings prescribed for such terms in section 591 of title 18 of the United States Code.

(l) **Depreciation.** A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(m) **Depletion.** In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one

person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

For percentage depletion allowable under this subsection, see section 114(b), (3) and (4).

(n) **Basis for depreciation and depletion.** The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(o) **Charitable and other contributions.** In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes;

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162 (g) (2);

(3) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U.S.C., Title 38, § 440);

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(5) a domestic fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; or

(6) the United Nations, but only if such contributions or gifts (A) are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and (B) are made after December 1, 1946, and before December 2, 1947;

to an amount which in all the above cases combined does not exceed 20 per centum of the taxpayer's adjusted gross income. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

For unlimited deduction if contributions and gifts exceed 90 per centum of the net income, see section 120.

(p) **Contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.**

(1) **General rule.** If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if com-

pensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under subsection (a) but shall be deductible, if deductible under subsection (a) without regard to this subsection, under this subsection but only to the following extent:

(A) In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 165(a), in an amount determined as follows:

(i) an amount not in excess of 5 per centum of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Commissioner upon periodical examinations at not less than five-year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan, plus

(ii) any excess over the amount allowable under clause (i) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Commissioner with the approval of the Secretary, but if such remaining unfunded cost with respect to any three individuals is more than 50 per centum of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

(iii) in lieu of the amounts allowable under (i) and (ii) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Commissioner with the approval of the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 per centum of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the Commissioner with the approval of the Secretary, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased.

(iv) Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

(B) In the taxable year when paid, in an amount determined in accordance with subparagraph (A) of this paragraph, if the contributions are paid toward the purchase of retirement annuities and such purchase is a part of a plan which meets the requirements of section 165(a), (3), (4), (5), and (6), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities.

(C) In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 165(a), in an amount not in excess of 15 per centum of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing

plan. If in any taxable year beginning after December 31, 1941, there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 per centum of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in a taxable year beginning after December 31, 1941, in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 per centum of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust", as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in subparagraph (A). If the contributions are made to two or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for the purposes of applying the limitations in this subparagraph.

(D) In the taxable year when paid, if the plan is not one included in paragraphs (A), (B), or (C), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid.

(E) For the purposes of subparagraphs (A), (B), and (C), a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made within sixty days after the close of the taxable year of accrual.

(F) If amounts are deductible under subparagraphs (A) and (C), or (B) and (C), or (A), (B), and (C), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 per centum of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in a taxable year beginning after December 31, 1941, in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 30 per centum of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This subparagraph shall not have the effect of reducing the amount otherwise deductible under subparagraphs (A), (B), and (C), if no employee is a beneficiary under more than one trust, or a trust and an annuity plan.

If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, this paragraph shall apply as if there were such a plan.

(2) Deductions under prior income tax acts. Any deduction allowable under section 23(q) of the Revenue Act of 1928 (45 Stat. 802), or the Revenue Act of 1932 (47 Stat. 182), or the Revenue Act of 1934 (48 Stat. 691), under section 23(p) of the Revenue Act of 1936 (49 Stat. 1661), or the Revenue Act of 1938 (52 Stat. 464), or the Internal Revenue Code for a taxable year beginning before January 1, 1942, which under such section was apportioned to any taxable year beginning after December 31, 1941, shall be allowed as a deduction for the years to which so apportioned to the extent allowable under such section if it had remained in force with respect to such year.

(8) Exemption of trusts under section 165. The provisions of par-

(q) Charitable and other contributions by corporations

In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes; or

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States, or of any State or Territory, or of the District of Columbia, or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary, or educational purposes or for the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, payment of which is made within a taxable year beginning after December 31, 1948, only if such contributions or gifts are to be used within the United States or any of its possessions exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162 (g) (2); or

(3) Posts or organizations of war veterans, or auxiliary units of, or trusts or foundations for, any such posts or organizations, if such posts, organizations, units, trusts, or foundations are organized in the United States or any of its possessions, and if no part of their net earnings inure to the benefit of any private shareholder or individual; or

(4) the United Nations, but only if such contributions or gifts (A) are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and (B) are made after December 1, 1946, and before December 2, 1947;

to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefits of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. In the case of a corporation reporting its net income on the accrual basis, at the election of the taxpayer any contribution or gift payment of which is made after the close of the taxable year and on or before the 15th day of the third month following the close of such year shall, for the purposes of this subsection, be considered as

paid during such taxable year if, during such year, the board of directors authorized such contribution or gift. Such election shall be made only at the time of the filing of the return for the taxable year, and shall be signified in such manner as the Commissioner, with the approval of the Secretary, shall by regulations prescribe.

(r) Dividends paid by banking corporations

(1) In the case of mutual savings banks, cooperative banks, and domestic building and loan associations, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(2) For deduction of dividends paid by certain other banking corporations, see section 121.

(s) Net operating loss deduction. For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122.

(t) Amortization deduction. The deduction for amortization provided in sections 124, 124A, and 124B.

(u) Alimony, etc., payments. In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the amount of any such payment is, under section 22(k) or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection.

(v) Bond premium deduction. In the case of a bondholder, the deduction for amortizable bond premium provided in section 125.

(w) Deductions of estate, etc., on account of decedent's deductions.

(1) In the case of a person described in section 126(b), the amount of the deductions in respect of a decedent to the extent allowed by such subsection.

(2) In the case of a person described in section 126(a), the amount of the deductions in respect of a decedent to the extent allowed by section 126(c).

(x) Medical, dental, etc., expenses. Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent specified in section 25 (b) (3)—

(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year, to the extent that such expenses exceed 5 per centum of the adjusted gross income; or

(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year, (A) the amount of such expenses for the care of the taxpayer and his spouse, and (B) the amount by which such expenses for the care of such dependents exceed 5 per centum of the adjusted gross income.

The deduction under this subsection shall not be in excess of \$1,250 multiplied by the number of exemptions allowed under section 25 (b) for the taxable year (exclusive of exemptions allowed under section 25 (b) (1) (B) or (C), with a maximum deduction of \$2,500, except that the maximum deduction shall be \$5,000 in the case of a joint return of husband and wife under section 51 (b). The term "medical care," as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance). The determination of whether an individual

is married at any time during the taxable year shall be made in accordance with the provisions of section 51 (b) (5).

(y) Repealed. Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(e), 62 Stat. 114.

(z) Amounts representing taxes and interest paid to cooperative apartment corporation.

(1) In general. In the case of a tenant-stockholder (as defined in paragraph (2)), amounts, not otherwise deductible, paid or accrued to a cooperative apartment corporation within the taxable year, if such amounts represent that proportion of the real estate taxes on the apartment building and the land on which it is situated, allowable as deductions under subsection (c), paid or incurred by the corporation, or of the interest paid or incurred by the corporation on its indebtedness contracted in the acquisition, construction, alteration, rehabilitation, or maintenance of such apartment building or in the acquisition of the land on which the building is located, which the stock of the corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation, including that held by the corporation.

(2) Definitions. For the purposes of this subsection—

(A) Cooperative apartment corporation. The term "cooperative apartment corporation" means a corporation—

(i) having one and only one class of stock outstanding,

(ii) all of the stockholders of which are entitled, solely by reason of their ownership of stock in the corporation, to occupy for dwelling purposes apartments in a building owned or leased by such corporation, and who are not entitled, either conditionally or unconditionally, except upon a complete or partial liquidation of the corporation, to receive any distribution not out of earnings and profits of the corporation, and

(iii) 80 per centum or more of the gross income of which for the taxable year in which the taxes and interest described in paragraph (1) are paid or incurred is derived from tenant-stockholders.

(B) Tenant-stockholder. The term "tenant-stockholder" means an individual who is a stockholder in a cooperative apartment corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Commissioner as bearing a reasonable relationship to the portion of the value of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment which such individual is entitled to occupy.

(aa) Optional standard deduction for individuals.

(1) Allowance. In the case of an individual, at his election a standard deduction as follows:

(A) Adjusted gross income \$5,000 or more. If his adjusted gross income is \$5,000 or more, the standard deduction shall be \$1,000 or an amount equal to 10 per centum of the adjusted gross income, whichever is the lesser, except that in the case of a separate return by a married individual, the standard deduction shall be \$500.

(B) Adjusted gross income less than \$5,000. If his adjusted gross income is less than \$5,000, the standard deduction shall be an amount equal to 10 per centum of the adjusted gross income upon the basis of which the tax applicable to the adjusted gross income of the taxpayer is determined under the tax table provided in section 400.

(2) In lieu of certain deductions and credits. The standard deduction shall be in lieu of: (A) all deductions other than those which under section 22(n) are to be subtracted from gross income in computing adjusted gross income, (B) all credits with respect to taxes of foreign countries and possessions of the United States, (C) all credits with

respect to taxes withheld at the source under section 143(a) (relating to interest on tax-free covenant bonds), and (D) all credits against net income with respect to interest on certain obligations of the United States and Government corporations of the character specified in section 25(a) (1) and (2).

(3) Method and effect of election.

(A) If the adjusted gross income shown on the return is \$5,000 or more, the standard deduction shall be allowed if the taxpayer so elects in his return, and the Commissioner, with the approval of the Secretary, shall by regulations prescribe the manner of signifying such election in the return.

(B) If the adjusted gross income shown on the return is less than \$5,000, the standard deduction shall be allowed if the taxpayer elects, in the manner provided in Supplement T, to pay the tax imposed by such supplement.

(C) If the taxpayer upon making his return fails to signify, in the manner provided by subparagraph (A) or (B), his election to take the standard deduction, such failure shall be considered his election not to take the standard deduction.

(D) If the adjusted gross income shown on the return is \$5,000 or more, but the correct adjusted gross income is less than \$5,000, then an election by the taxpayer under subparagraph (A) to take the standard deduction shall be considered as his election to pay the tax imposed by Supplement T; and his failure to make under subparagraph (A) an election to take the standard deduction shall be considered his election not to pay the tax imposed by Supplement T. If the adjusted gross income shown on the return is less than \$5,000, but the correct adjusted gross income is \$5,000 or more, then an election by the taxpayer under subparagraph (B) to pay the tax imposed by Supplement T shall be considered as his election to take the standard deduction; and his failure to elect under subparagraph (B) to pay the tax imposed by Supplement T shall be considered his election not to take the standard deduction.

(4) Husband and wife. In the case of husband and wife, the standard deduction shall not be allowed to either if the net income of one of the spouses is determined without regard to the standard deduction.

(5) Short period. In the case of a taxable year of less than twelve months on account of a change in the accounting period, the standard deduction shall not be allowed.

(6) Determination of status. For the purposes of this subsection—

(A) the determination of whether an individual is married shall be made as of the close of his taxable year, unless his spouse dies during the taxable year, in which case such determination shall be made as of the time of such death; and

(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(7) Change of election. Under regulations prescribed by the Secretary, a change of an election to take, or not to take, the standard deduction for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding, for the purposes of paragraph (4), to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to the standard deduction for the taxable year covered in such separate return, consistent with the change of election sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed upon with the Secretary, of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse, for the taxable year corresponding (for the purposes of paragraph (4)) to the taxable year of the taxpayer, has been compromised under the provisions of section 3761.

(bb) **Circulation expenditures.** Notwithstanding section 24 (a), all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(cc) Development of mines

(1) **In general.** Except as provided in paragraph (2), all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after December 31, 1950, and after the existence of ores or minerals in commercially marketable quantities has been disclosed. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 23 (1), but allowances for depreciation shall be considered, for the purposes of this subsection, as expenditures.

(2) **Election of taxpayer.** At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, expenditures described in paragraph (1) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this paragraph, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(3) **Adjusted basis of mine or deposit.** The amount of expenditures which are treated under paragraph (2) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 113 (b) (1) (J), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 114.

(dd) **Repayment by mutual savings banks, etc., of certain loans.** In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank without capital stock organized and operated for mutual purposes and without profit, amounts paid by the taxpayer during the taxable year in repayment of loans made prior to September 1, 1951, by (1) the United States or any agency or instrumentality thereof which is wholly owned by the United States, or (2) any mutual fund established under the authority of the laws of any State.

(ee) **Long-term capital gains.** In the case of a taxpayer other than a corporation, the deduction for long-term capital gains provided in section 117(b).

(ff) Deduction of exploration expenditures

(1) **In general.** In the case of expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred prior to the beginning of the development stage of the mine or deposit, so much of such expenditures as does not exceed \$75,000. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 23 (l), but allowances for depreciation shall be considered, for the purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas.

(2) **Election of taxpayer.** If the taxpayer elects, in accordance with regulations prescribed by the Secretary, to treat as deferred expenses any portion of the amount deductible for the taxable year under paragraph (1), such portion shall not be deductible under paragraph (1) but shall be deductible on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made under this paragraph for any taxable year shall be binding for such year.

(3) **Limitation.** This subsection shall not apply to any amounts paid or incurred in any taxable year if in any four preceding years the taxpayer, or any individual or corporation who has transferred to the taxpayer any mineral property under circumstances which make the provisions of paragraph (7), (8), (11), (13), (15), (17), (20), or (22) of section 113 (a) applicable to such transfer, has either (A) been allowed a deduction under paragraph (1) of this subsection or (B) made the election provided under paragraph (2) of this subsection.

(4) **Adjusted basis of mine or deposit.** The amount of expenditures which are treated under paragraph (2) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, but such amounts, and the adjustments to basis provided in section 113 (b) (1) (M) shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 114, 53 Stat. 12, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 211(a), 224, 53 Stat. 867, 880; Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title III, § 301, Title V, § 506(b), 54 Stat. 998, 1008; Mar. 7, 1941, c. 10, § 10(b), 55 Stat. 27, eff. Oct. 8, 1940, 11 p. m., E. S. T.; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title II, § 202(a), 55 Stat. 700; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 105(c), 120(b), 121(a, c), 122, 123(a), 124(a), 125, 126(a), 127(a, c), 128, 134(d), 158(b), 162(b), 56 Stat. 806, 817, 819, 820, 822, 825, 826, 830,

857, 863; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 111, 112(a) (b), 113(a), 114, 115, 58 Stat. 34-36; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, §§ 8(b) (c), 9(a), 58 Stat. 236; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (1), 59 Stat. 558; Dec. 29, 1945, c. 652, Title II, § 202(a), 59 Stat. 673; Feb. 26, 1947, c. 7, §§ 1, 2, 61 Stat. 6; Aug. 8, 1947, c. 515, § 16, 61 Stat. 920; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(e), Title III, §§ 302, 304, 62 Stat. 114, 116; Oct. 25, 1949, c. 720, § 3(a), 63 Stat. 892; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 204(a), 216(b), Title III, § 332(a), (b), 64 Stat. 929, 941, 959; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 303, 64 Stat. 1219; May 12, 1951, c. 56, § 1, 65 Stat. 40; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 307(a), 308(a, b), 309(a), 313(e)-(g), 322(a) (1), 342(a), 65 Stat. 485, 490, 499, 515; July 8, 1952, c. 588, §§ 2, 4(a), 66 Stat. 442; July 9, 1952, c. 598, § 101, 66 Stat. 467; Aug. 15, 1953, c. 512, Title II, § 206(b) (1), 67 Stat. 622.

1 So in original.

Historical Note

References in Text. Chapter 2E, referred to in subsecs. (a) (1) (C) and (c) (1) (B), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, §§ 224(b), 228(b) 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761 and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Title II of the Revenue Act of 1917, referred to in subsec. (c) (1) (B), refers to Act Oct. 3, 1917, c. 63, Title II, § 200 et seq., 40 Stat. 302.

Title III of the Revenue Act of 1918, referred to in subsec. (c) (1) (B), refers to Act Feb. 24, 1919, c. 18, Title III, § 300 et seq., 40 Stat. 1083.

Title III of the Revenue Act of 1921, referred to in subsec. (c) (1) (B), refers to Act Nov. 23, 1921, c. 136, Title III, § 300 et seq., 42 Stat. 271.

Section 216 of the National Industrial Recovery Act, referred to in subsec. (c) (1) (B), refers to Act June 16, 1933, c. 40, § 216, 48 Stat. 208.

Section 702 of the Revenue Act of 1934, referred to in subsec. (c) (1) (B), refers to Act May 10, 1934, c. 277, § 702, 48 Stat. 770.

1953 Amendment. Subsec. (t) amended by Act Aug. 15, 1953, which substituted the words "sections 124, 124A, and 124B" for "section 124 and section 124A."

1952 Amendment. Subsec. (a) (1) (A) amended by Act July 8, 1952, § 2, to allow under this subparagraph the deduction of such expenses as are described in section 22(b) (16) of I.R.C.1939 only to the extent they exceed the amount excluded from gross income.

Subsec. (k) amended by Act July 9, 1952, which added paragraph (6).

Subsec. (o) amended by Act July 8, 1952, § 4(a), by increasing the limit of charitable deductions from gross income from 15 per cent to 20 per cent.

1951 Amendments. Subsec. (a) (1) (C) amended by Act Jan. 3, 1951, to make it

conform to the addition of subchapter D of this chapter.

Subsec. (c) (3) amended by Act May 12, 1951, to allow consumers of gasoline or other motor vehicle fuel to deduct, for income-tax purposes, State taxes imposed on wholesalers and passed on to consumers.

Subsec. (k) (1) amended by Act Oct. 20, 1951, § 312(e), to add last sentence.

Subsec. (r) amended by Act Oct. 20, 1951, § 313(f), to insert subparagraph (1) and make former text of subsection subparagraph (2).

Subsec. (x) amended by Act Oct. 20, 1951, § 307(a), to remove the 5 per cent limitation for any taxpayer if either the taxpayer or his spouse is aged 65 or over.

Subsec. (aa) (3) amended by Act Oct. 20, 1951, § 308(a), to strike out of subparagraphs (A) and (B) the word "only" preceding "if the taxpayer", and to provide in subparagraph (C) that a taxpayer's failure to signify his election to take the standard deduction shall be considered his election not to take the standard deduction.

Subsec. (aa) (7) added by Act Oct. 20, 1951, § 308(b).

Subsecs. (cc), (dd), (ee), (ff) added by Act Oct. 20, 1951, §§ 309(a), 313(g), 322(a) (1), 342(a), respectively.

1950 Amendments. Subsec. (o) (2) amended by Act Sept. 23, 1950, § 332(a), which substituted "legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g) (2);" in lieu of "legislation;"

Subsec. (q) (2) amended by Act Sept. 23, 1950, § 332(b), which substituted "legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g) (2); or" in lieu of "legislation;"

Subsec. (t) amended by Act Sept. 23, 1950, § 216(b), which substituted "sec-

tion 124 and section 124A" in lieu of "section 124".

Subsec. (bb) added by Act Sept. 23, 1950.

1949 Amendment. Subsec. (q) amended by Act Oct. 25, 1949, which added last two sentences to liberalize the rule respecting time for payment of charitable contributions.

1948 Amendment. Subsec. (x) amended by Act Apr. 2, 1948, § 304, which increased the deductions allowable where there is a joint return to \$3750 if there are three exemptions under section 25(b) of I.R.C.1939, and to a maximum \$5000 if there are four or more exemptions under said section 25(b).

Subsec. (y) repealed by Act Apr. 2, 1948, § 302(b), related to exemptions for the blind, and is now covered by section 25(b) of I.R.C.1939.

Subsec. (aa) (1) amended by Act Apr. 2, 1948, § 302(a), which increases the standard deduction from \$500 to \$1000 or an amount equal to 10 per centum of the adjusted gross income whichever is the lesser.

Subsec. (aa) (4) amended by Act Apr. 2, 1948, § 302(b), which split up former subsec. (aa) (4) into new subpars. namely (4) and (6), and makes both husband and wife itemize their deductions, rather than take the standard deduction, if one of them so itemizes.

Subsec. (aa) (6) added by Act Apr. 2, 1948, § 302(c), and relates to the determination of the status of individuals as husband and wife which formerly was contained in the last sentence of subsec. (aa) (4).

1947 Amendment. Subsec. (q) (2) amended by Act Aug. 8, 1947, which substituted for the war termination clause the specific date of Dec. 31, 1948.

Subsec. (q) (4) added by Act Feb. 28, 1947.

Subsec. (o) (6) added by Act Feb. 28, 1947.

1945 Amendment. Subsec. (p) (2) amended by Act Dec. 29, 1945, which struck out "January 1, 1943" and "December 31, 1942" and inserted in lieu thereof "January 1, 1942" and "December 31, 1941" respectively.

Subsec. (x) amended by Act Nov. 8, 1945, § 102(b) (1), which struck out "sur-tax" wherever appearing therein.

1944 Amendment. Subsec. (c) (1) amended by Act Feb. 25, 1944, which struck out "and" at end of subpar. (D), struck out period at end of subpar. (E) and inserted in lieu thereof "; and", added subpar. (F).

Subsec. (g) (4) (B) amended by Act Feb. 25, 1944, which added material within parenthesis following "rents" and "interests", respectively.

Subsec. (k) (1) amended by Act Feb. 25, 1944, which closed parenthesis after "Commissioner" instead of after "bad

debts", and changed "become worthless within" to read "charged off".

Subsec. (k) (5) (B) amended by Act Feb. 25, 1944, which added material within parenthesis following "rents" and "interests", respectively.

Subsec. (o) (5), amended by Act May 29, 1944, which struck out "net income as computed with the benefit of this subsection or of subsection (x)" following "15 per centum of the taxpayer's" and inserted in lieu thereof "adjusted gross income."

Subsec. (q) amended by Act Feb. 25, 1944, which inserted "veteran rehabilitation service" following "scientific" in second par., added "or" at end of second par. and added par. (3).

Subsec. (x) amended generally by Act May 29, 1944, which among other changes deleted subds. (1) and (2).

Subsec. (y) added by Act Feb. 25, 1944.

Subsec. (aa) added by Act May 29, 1944.

1942 Amendment. Subsecs. (a), (c) (1), (B, C), (g) (3), (k), (l), (o)-(q) amended and subsecs. (c) (3), (g) (4), (u)-(x), (z) added by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) (3) added by Act Mar. 7, 1941.

Subsec. (c) amended by Act Sept. 20, 1941.

1940 Amendment. Subsec. (c) (1) amended by Act Oct. 8, 1940, § 506(b).

Subsec. (t) was added by Act Oct. 8, 1940, § 301.

1939 Amendment. Subsecs. (o) (1) (2), and (q), amended, and subsec. (s) added, by Act June 29, 1939.

Effective Date of 1953 Amendment. Section 206(c) of Act Aug. 15, 1953 provided in part that the amendment to this section should apply only with respect to taxable years ending after Aug. 15, 1953.

Effective Date of 1952 Amendments. Section 3 of Act July 8, 1952, provided in part that the amendment of subsec. (a) (1) (A) should apply only with respect to sports programs conducted after July 8, 1952, under agreements entered into after such date.

Amendment of subsection (k) was made applicable with respect to taxable years beginning after Dec. 31, 1951, by section 101 of Act July 9, 1952.

Section 4(c) of Act July 8, 1952, provided in part that amendment of section should apply only with respect to taxable years beginning after Dec. 31, 1951.

Effective Date of 1951 Amendments. Section 2 of Act May 12, 1951, provided that the amendment of subsec. (c) (3) by section 1 of said Act May 12, 1951, should apply to taxable years beginning after Dec. 30, 1951.

Amendments of subsecs. (k) (1), (r), and (dd) made applicable only with respect to taxable years beginning after

Dec. 31, 1951, by section 313(j) of Act Oct. 20, 1951. Amendment of subsec. (x) was made applicable only with respect to taxable years beginning after Dec. 31, 1950, by section 307(b) of Act Oct. 21, 1951. Amendment of subsec. (aa) made applicable only with respect to taxable years beginning after Dec. 31, 1949, by section 308(c) of Act Oct. 20, 1951. Addition of subsec. (cc) made applicable only with respect to taxable years ending after Dec. 31, 1950, by section 309(d) of Act Oct. 20, 1951. Addition of subsec. (ee) made applicable only with respect to taxable years beginning on or after Oct. 20, 1951, by section 322(d) of Act Oct. 20, 1951. Addition of subsec. (ff) made applicable in taxable years beginning after Dec. 31, 1950, by section 342(c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Section 204(c) of Act Sept. 23, 1950, provided that: "The amendments made by this section [amending this section and section 113 of I.R.C.1939] shall be applicable with respect to taxable years beginning after December 31, 1945, except that in the case of any taxable year beginning prior to January 1, 1950—

"(1) the amendments shall not be applicable with respect to expenditures for which a deduction was not allowed the taxpayer for such year, if allowance of credit or refund with respect to such year is barred on the date of the enactment of this Act [Sept. 23, 1950] by reason of any law or rule of law; and

"(2) the election provided in section 23 (bb) of the Internal Revenue Code [subsec. (bb) of this section] shall not (despite the last sentence of such section) be applicable with respect to any expenditure for which a deduction was claimed by the taxpayer under his latest treatment, prior to the date of the enactment of this Act [Sept. 23, 1950], of such expenditure in connection with his tax liability for such taxable year."

Amendment of subsec. (t) as applicable with respect to taxable years ending after Dec. 31, 1949, see note set out under section 124A of I.R.C.1939.

Effective Date of 1949 Amendment. Section 3(c) of Act Oct. 25, 1949, provided that:

"The amendments made by this section [to sections 23(q), 102(d) (1) (B), 336(a) (2), 505(a) (2)] shall be applicable with respect to taxable years beginning after December 31, 1942. If the election provided for in such amendments is made for any taxable year beginning before January 1, 1949—

"(1) the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within one year after the date of the enactment of this Act [Oct. 25, 1949]; but

"(2) such election shall not be allowed unless the taxpayer, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, consents in writing to the assessment (within such period as may be agreed

upon) of any deficiency, to the extent resulting from such election, for any other taxable year of the taxpayer, even though on the date of the filing of such consent such assessment is otherwise prevented by the operation of any law or rule of law."

Effective Date of 1948 Amendments. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142 (a), 147(a), 163(a) (1), and 1622(b) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947, and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Section 305 of Act Apr. 2, 1948, provided in part that the amendments to this section by sections 302 and 304 of said Act Apr. 2, 1948, should be applicable with respect to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by section 108(d) of I.R.C.1939.

Effective Date of 1945 Amendments. Amendment of subsec. (p) (2) by Act Dec. 29, 1945, § 202(a), was made effective as if it had been made a part of section 162(b) of Act Oct. 21, 1942, by section 202(b) thereof.

Amendment of subsec. (x) by Act Nov. 8, 1945, was made applicable to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in 1945 and ending in 1948, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendments. Act May 29, 1944, §§ 8(b), (c), 9(a), made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Act Feb. 25, 1944, § 111, made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Act Feb. 25, 1944, § 112(a, b), made applicable to taxable years beginning after Dec. 31, 1941, by section 112(c) thereof.

Act Feb. 25, 1944, § 113(a), made applicable to taxable years beginning after Dec. 31, 1938, by section 113(b) thereof.

Act Feb. 25, 1944, § 114, made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Act Feb. 25, 1944, § 115, made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date of 1942 Amendment. Amendments to subssecs. (c) (1) (B), (2) (3), (g) (4) (o) (q), (v) (x), (z) by Act Oct. 21, 1942, §§ 105 (c, C2), 122, 123(a), 127(c), 125, 126(a), 127(a), 128, were all made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendments of subsec. (a) and subsec. (1), first sentence, by Act Oct. 21, 1942, made applicable to taxable years beginning after Dec. 31, 1938, by section 121(d) thereof.

Amendment of subsec. (c) (1) (C) by Act Oct. 21, 1942, § 158(b), made applicable to taxable years beginning after Dec. 31, 1940, by section 158(c) thereof.

Amendment of subsec. (k) by Act Oct. 21, 1942, § 124(a) made effective by section 124(d) thereof as follows: "(d) The amendments made by this section adding the last sentence of section 23(k) (1) and adding section 23(k) (4) shall be effective only with respect to taxable years beginning after December 31, 1942; the amendment inserting section 23(k) (5) and amendments related thereto shall be applicable only with respect to taxable years beginning after December 31, 1941; and the other amendments made by this section [to sections 204(c) (6) and 3771 (d)] shall be effective with respect to taxable years beginning after December 31, 1938."

Amendment of subsec. (p) by Act Oct. 21, 1942, § 162(b), made effective by section 162(d) thereof as amended by Acts Dec. 17, 1943, c. 346, § 3, 57 Stat. 602; Dec. 20, 1944, c. 618, § 2, 58 Stat. 830, as follows: "(d) The amendments made by this section [to sections 22(b) (2) (B), 23(p), 165 of I.R.C. 1939 and section 80a-3 (c) (13) of Title 15] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165 (a) (3), (4), (5), and (6) until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions thereof satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943."

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p) (1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p) (1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

"(2) A stock bonus, pension, profit-sharing, or annuity plan—

"(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

"(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period."

Amendment adding subsec. (u) by Act Oct. 21, 1942, § 120(b), was made effective by section 120(g) thereof as follows: "The amendments made by this section [to sections 22(b) (2) (K), 23(u), 25(b) (2) (A), 171 and 3797(a) (17)] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that if the first taxable year beginning after December 31, 1941, of the husband does not begin on the same day as the first taxable year beginning after December 31, 1941, of the wife, such amendments shall first become applicable in the case of the husband on the first day of the wife's first taxable year beginning after December 31, 1941, regardless of the taxable year of the husband in which such day falls."

Amendment adding (w) by Act Oct. 21, 1942, § 134(d), made applicable to taxable years ending after Dec. 31, 1942, by section 134(f) thereof.

Effective Date of 1941 Amendments. Section 205 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Section 17 of Act Mar. 7, 1941, provided that the amendment of subsec. (a) (3) should be effective as of Oct. 8, 1940, 11 p. m. E.S.T., and applicable to taxable years beginning after Dec. 31, 1939.

Effective Date of 1940 Amendment. Section 506(b) of Act Oct. 8, 1940 provided that the amendment of subsec. (c) (1) should be effective as of Feb. 10, 1939.

Effective Date of 1939 Amendments. Section 229 of Act June 29, 1939 provided that the amendments of subsecs. (o) (1), (2) and (q) were made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Cessation of Hostilities. The cessation of hostilities of World War II, referred to in subsec. (q) (2) of this section, relating to deduction of certain contributions by corporations, was proclaimed at 12 o'clock noon of December 31, 1946, by Proc No. 2714, 12 F.R. 1.

Non-Trade, Etc., Deductions Under Prior Revenue Acts. Section 121(e) of Act Oct. 21, 1942, provided as follows: "(e) For the purposes of the Revenue Act of 1938 or any prior revenue Act the amendments made to the Internal Revenue Code [1939] by this section [amending sections 23(a), (l), and 24(a) (5)] shall be effective as if they were a part of such revenue Act on the date of its enactment."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 24, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; May 12, 1951, 1951 U.S. Code Cong. Service, p. 1413; Jan. 3, 1951, 1950 U.S. Code Cong. Service, p. 4027; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053; Apr. 2, 1948, U.S. Code Cong. Service, p. 1163; Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1868; Feb. 26, 1947, 1947 U.S. Code Cong. Service, p. 956; Dec. 29, 1945, 1945 U.S. Code Cong. Service, p. 946; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 24. Items not deductible

(a) **General rule.** In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except expenditures for the development of mines or deposits deductible under section 23(cc);

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy;

(5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this chapter, or any amount otherwise allowable under section 23(a) (2) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this chapter;

(6) Any amount paid or accrued on indebtedness incurred or continued to purchase a single premium life insurance or endowment contract. For the purposes of this paragraph, if substantially all the premiums on a life insurance or endowment contract are paid within a period of four years from the date on which such contract is purchased, such contract shall be considered a single premium life insurance or endowment contract; or

(7) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Commissioner with the approval of the Secretary, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

(b) Losses from sales or exchanges of property

(1) Losses disallowed. In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

(A) Between members of a family, as defined in paragraph (2) (D);

(B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(D) Between a grantor and a fiduciary of any trust;

(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

(F) Between a fiduciary of a trust and a beneficiary of such trust.

(2) Stock ownership, family, and partnership rule. For the purposes of determining, in applying paragraph (1), the ownership of stock—

(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(B) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(E) Constructive ownership as actual ownership.—Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraph (A), (B), or (C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or (C) shall not be treated as owned by him for the purpose of again applying either of such subparagraphs in order to make another the constructive owner of such stock.

(c) Unpaid expenses and interest. In computing net income no deduction shall be allowed under section 23(a), relating to expenses incurred, or under section 23(b), relating to interest accrued—

(1) If within the period consisting of the taxable year of the taxpayer and two and one-half months after the close thereof (A) such expenses or interest are not paid, and (B) the amount thereof is not includible in the gross income of the person to whom the payment is to be made; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24(b).

(d) **Holders of life or terminable interest.** Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections (l) and (m) of section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(e) **Tax withheld on tax-free covenant bonds**

For nondeductibility of tax withheld on tax-free covenant bonds, see section 143(a) (3).

(f) **Sale of land with unharvested crop.** Where an unharvested crop sold by the taxpayer is considered under the provisions of section 117 (j) (3) as "property used in the trade or business", in computing net income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed. 53 Stat. 16, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 121(b), 127(b), 129, 130(a), 56 Stat. 819, 826, 827; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 309(c), 323(b) (1), 65 Stat. 487, 501; Aug. 15, 1953, c. 512, Title II, § 202(a), 67 Stat. 617.

Historical Note

1953 Amendment. Subsec. (c) (1) amended by Act Aug. 15, 1953 to prevent the disallowance of a deduction for interest or expenses if the amount thereof is includible in the gross income of the payee within the taxable year of the payor or within two and one-half months after the close of the taxable year.

1951 Amendment. Subsec. (a) (2) amended by Act Oct. 20, 1951, to add "except expenditures * * * section 23 (c)" following "estate".

Subsec. (f) added by Act Oct. 20, 1951, § 323(b) (1).

1942 Amendment. Subsec. (a) (1, 4, 5, 7) amended and par. (6) thereof added by Act Oct. 21, 1942.

Effective Date of 1953 Amendment. Section 202(b) of Act Aug. 15, 1953 provided that:

"(1) Except as otherwise provided in paragraph (2), the amendment [to subsec. (c) (1)] made by subsection (a) shall apply only with respect to taxable years beginning after December 31, 1950.

"(2) At the election of a taxpayer (hereinafter in this paragraph referred to as the 'payor') made within one year after the date of the enactment of this Act [Aug. 15, 1953], the amendment made by subsection (a) shall also apply with respect to such taxable years of the payor beginning after December 31, 1945, and before January 1, 1951, as are specified by the payor in making such election. Such election for any taxable year shall not be valid as to any amount unless, at or before the time when such election is filed—

"(A) the person (hereinafter in this paragraph referred to as the 'payee') to whom such amount was payable included such amount in gross income for his taxable year for which such amount was includible in gross income, or

"(B) the payee files a written consent to the assessment and collection of any deficiency and interest resulting from the payee's failure to include such amount in gross income for such taxable year, or

"(C) the payor pays an amount equal to the deficiency and interest which would be payable by the payee pursuant to subparagraph (B) if he filed such consent. (Any amount paid under this subparagraph shall be assessed, notwithstanding any law or rule of law to the contrary, as an addition to the tax of the payor for the year for which the election is filed.)

"The periods of limitation provided in sections 275 and 276 of the Internal Revenue Code [sections 275 and 276 of I.R.C. 1939] on the making of an assessment and the beginning of distraint or a proceeding in court for collection shall, with respect to any deficiency and interest thereon resulting from any consent filed pursuant to subparagraph (B), include one year immediately following the date such consent is filed, and such assessment and collection may be made notwithstanding any provision of law or any rule of law which otherwise would prevent such assessment and collection. If an election by a payor should be filed for a taxable year of the payor for which allowance of credit or refund of an overpayment is barred (at the time of such

filing) by any law or rule of law, any consent filed by the payee in respect of any amount which represents expenses incurred or interest accrued by the payor for such year shall be void. If a consent requires the inclusion in the gross income of the payee for any taxable year of an amount which was erroneously included in the gross income of the payee for another taxable year and, on the date the consent is filed, correction of the effect of the error is prevented by the operation of any provision of the internal-revenue laws other than section 3761 of the Internal Revenue Code [section 3761 of I.R.C.1939] (relating to compromises), then the effect of the error shall be corrected in accordance with section 3801 of the Internal Revenue Code [section 3801 of I.R.C.1939] as if the consent were a determination under such section 3801 in which there is adopted a position maintained by the Secretary of the Treasury. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph."

Effective Date of 1951 Amendment. Amendment of subsec. (a) (2) made applicable to taxable years ending after Dec. 31, 1950, by section 309(d) of Act Oct. 20, 1951.

Amendment of subsec. (f) made applicable to any taxable year for which a deduction is disallowed by reason of sales, exchanges, or conversions to which

subsection (a) is applicable, by section 323(c) of Act Oct. 21, 1951.

Effective Date of 1942 Amendment. Amendments of subsec. (a) (1, 4, 6, 7) by Act Oct. 21, 1942, §§ 127(b), 129, 130(a), were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment of subsec. (a) (5), inserting reference to section 23(a) (2), made applicable to taxable years beginning after Dec. 31, 1938, by section 121(e) of Act Oct. 21, 1942.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

"Similar provisions were contained in the following Act:

"1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 65 Stat. 808."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2423. See, also, Act Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 25. Credits of individual against net income

(a) **Credits for normal tax only.** There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(1) **Interest on United States obligations.** The amount received as interest upon obligations of the United States, if such interest is included in gross income under section 22, and if, under the Act authorizing the issue of such obligations, as amended and supplemented, such interest is exempt from normal tax.

(2) **Interest on obligations of instrumentalities of the United States.** The amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax. (For reduction of credit under paragraph (1) or (2) on account of amortizable bond premium, see section 125.)

(3) **Repealed.** Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 107(a), 58 Stat. 31; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (2), 59 Stat. 558.

(4) **Repealed.** Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 107(a), 58 Stat. 31.

(b) **Credits for both normal tax and surtax.**

(1) **Credits.** There shall be allowed for the purposes of both the normal tax and the surtax, the following credits against net income:

(A) An exemption of \$600 for the taxpayer; and an additional exemption of \$600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the

taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer;

(B) (i) An additional exemption of \$600 for the taxpayer if he has attained the age of 65 before the close of his taxable year; and

(ii) An additional exemption of \$600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer;

(C) (i) An additional exemption of \$600 for the taxpayer if he is blind at the close of his taxable year; and

(ii) An additional exemption of \$600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this clause the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, unless the spouse dies during such taxable year, in which case such determination shall be made as of the time of such death;

(iii) For the purposes of this subparagraph an individual is blind only if either: his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(D) An exemption of \$600 for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$600, except that the exemption shall not be allowed in respect of a dependent who has made a joint return with his spouse under section 51 for the taxable year beginning in such calendar year.

(2) Determination of status. For the purposes of this subsection—

(A) the determination of whether an individual is married shall be made as of the close of his taxable year, unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death; and

(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(3) Definition of dependent. As used in this chapter the term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(A) a son or daughter of the taxpayer, or a descendant of either,

(B) a stepson or stepdaughter of the taxpayer,

(C) a brother, sister, stepbrother, or stepsister of the taxpayer,

(D) the father or mother of the taxpayer, or an ancestor of either,

(E) a stepfather or stepmother of the taxpayer,

(F) a son or daughter of a brother or sister of the taxpayer,

(G) a brother or sister of the father or mother of the taxpayer,

(H) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

As used in this paragraph, the terms "brother" and "sister" include a brother or sister by the half-blood. For the purposes of determining whether any of the foregoing relationships exist (1) a legally adopted child of a person or (2) a child for which petition for adoption was filed by a person in the appropriate court and denied because of mental in-

capacity of surviving natural parent to agree to such adoption, shall be considered a child of such person by blood. The term "dependent" does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States. For taxable years beginning after December 31, 1946, the preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer born to him, or legally adopted by him, in the Philippine Islands, if (i) the child is a resident of the Republic of the Philippines, and (ii) the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him. A payment to a wife which is includible under section 22(k) or section 171 in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent. 53 Stat. 17, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 6(a), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 111(a), 113, 55 Stat. 696, 697; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 112(b), 120(e) (1), 126(i) (1), 131 (a) (1), (b), 56 Stat. 811, 818, 825, 827, 828; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 103, 107(a), 58 Stat. 31; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 10(a, b), 58 Stat. 238; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(a), (b) (2), 59 Stat. 558; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 201, 62 Stat. 112; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 310(a), 65 Stat. 487; Aug. 7, 1953, c. 346, § 3(a), 67 Stat. 471; Aug. 9, 1955, c. 693, § 1, 69 Stat. 625.

Historical Note

1955 Amendment. Subsec. (b) (3) amended by Act Aug. 9, 1955 to include as a dependent any child born to the taxpayer, or legally adopted by him, in the Philippine Islands.

1953 Amendment. Subsec. (b) (3) amended by Act Aug. 7, 1953, to provide that a child may be treated as a dependent of the person filing the adoption petition if such person meets the required support test of subsec. (a) (3).

1951 Amendment. Subsec. (b) (1) (D) amended by Act Oct. 20, 1951, § 310(a), to insert "\$600" in lieu of "\$500" where it appears a second time.

1948 Amendment. Subsec. (b) (1), (2), amended by Act Apr. 2, 1948, which increases the personal old-age, blind, dependents' exemptions from \$500 to \$600, and provides that the determination of the status of a taxpayer is made at the end of the taxable year, unless the spouse dies during the year, in which case the determination is made at the time of such death.

1945 Amendment. Subsec. (a) (3) repealed by Act Nov. 8, 1945, § 102(b).

Subsec. (b) (1) amended generally by Act Nov. 8, 1945, § 102(a), so as to allow credits for both normal tax and surtax.

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which added par. (3), relating to normal-tax exemption.

Subsec. (a) (3, 4) repealed by Act Feb. 25, 1944. Prior to said repeal, subsec. read as follows:

"(3) **Earned Income Credit.**—10 per centum of the amount of the earned net

centum of the amount of the net income, income, but not in excess of 10 per

"(4) **Earned Income Definitions.**—For the purposes of this section—

"(A) 'Earned income' means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

"(B) 'Earned income deductions' means such deductions are allowed by section 23 for the purpose of computing net income, and are properly allocable to or chargeable against earned income.

"(C) 'Earned net income' means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer's net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000."

Subsec. (b) amended generally by Act May 29, 1944, to eliminate references to husband and wife, to head of a family, and to provide for surtax exemption on a per capita system.

Subsec. (b) (3) amended generally by Act Feb. 25, 1944, to provide new basis for determination of status.

1942 Amendment. Subsecs. (a) (1, 2), and (b) (1, 2) (A), amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (b) (1) amended by Act Sept. 20, 1941, § 111(a).

Subsec. (b) (2) amended by Act Sept. 20, 1941, § 113.

1940 Amendment. Subsec. (b) (1) amended by Act June 25, 1940, which substituted "\$800" for "\$1,000" and "\$2,000" for "\$2,500".

Effective Date of 1955 Amendment. Section 3(a) of Act Aug. 9, 1955 provided that the amendment of this section by section 1 of such Act should apply with respect to taxable years beginning after December 31, 1946, to which the Internal Revenue Code of 1939 applies.

Effective Date of 1953 Amendment. Section 3(b) of Act Aug. 7, 1953, provided that the amendment of subsec. (b) (3) shall be applicable to taxable years beginning after Dec. 31, 1945.

Effective Date of 1951 Amendment. Amendment of subsec. (b) (1) (D) made applicable only with respect to taxable years beginning after Dec. 31, 1950, by section 310(b) of Act Oct. 20, 1951.

Effective Date of 1948 Amendments. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, § 102(a), (b) (2), was made applicable with respect to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Act May 29, 1944, § 10(a), (b), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Act Feb. 25, 1944, §§ 103, 107(a), was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date of 1942 Amendments. Amendments of subsecs. (a) (2) and (b) (1), (2) (A), by Act Oct. 21, 1942, §§ 120(1), 131(a) (b), were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment of subsec. (a) (1) by Act Oct. 21, 1942, § 112(b), was made effective as of March 1, 1941, by section 112(c) thereof.

Amendment of subsec. (b) (2) (A) inserting a sentence at the end thereof, by Act Oct. 21, 1942, § 120(e), was made effective by section 120(g) thereof as follows: "(g) The amendments made by this section [to sections 22(b) (2), (k), 23(u), 25(b) (2) (A), 171, 3797(a) (17)] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that if the first taxable year beginning after December 31, 1941, of the husband does not begin on the same day as the first taxable year beginning after December 31, 1941, of the wife, such amendments shall first become applicable in the case of the husband on the first day of the wife's first taxable year beginning after December 31, 1941, regardless of the taxable year of the husband in which such day falls."

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendment. Act June 25, 1940: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of I.R.C.1939], shall be applicable only with respect to taxable years beginning after December 31, 1939, by section 9 of said Act."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 7, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2186. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 1163; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 26. Credits of corporations

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) **Interest on obligations of the United States and its instrumentalities.** The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25(a) (1) or (2). (For reduction of credit under this subsection on account of amortizable bond premium, see section 125.)

(b) **Dividends received.** An amount equal to the sum of—

(1) **In general.** 85 per centum of the amount received as dividends (other than dividends described in paragraph (2) on the preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter.

(2) **Certain preferred stock**

(A) **Calendar year 1951.** In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, 61 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26 (h) for dividends paid is allowable.

(B) **Taxable years beginning after March 31, 1951, and before April 1, 1954.** In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, 62 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26 (h) for dividends paid is allowable.

(C) **Taxable years beginning after March 31, 1954.** In the case of taxable years beginning after March 31, 1954, 59 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26 (h) for dividends paid is allowable.

For the purpose of this subsection (but not for the purposes of computing adjusted net income), if the whole or any part of a dividend is received after August 31, 1950, in property other than money, then, with respect to such property, the shareholder shall not be considered to have received as a dividend an amount in excess of the adjusted basis of such property in the hands of the distributing corporation at the time of distribution increased in the amount of gain or decreased in the amount of loss recognized to the distributing corporation by reason of such distribution. The credit allowed under this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U.S.C., title 15, c. 4), or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States. In no event shall the credit allowed by this subsection exceed 85 per centum of the adjusted net income computed without regard to the deduction allowed by section 23(s).

(3) **Dividends received from certain foreign corporations.** In the case of dividends received from a foreign corporation (other than a foreign personal holding company) which is subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends are paid (or, if the corporation has not

been in existence for 36 months at the close of such taxable year, for the period the foreign corporation has been in existence as of the close of such taxable year) such foreign corporation has been engaged in trade or business within the United States and has derived 50 per centum or more of its gross income from sources within the United States—

(A) an amount equal to 85 per centum of the dividends received out of its earnings or profits specified in clause (2) of the first sentence of section 115 (a), but such amount shall not exceed an amount which bears the same ratio to 85 per centum of such dividends received out of such earnings or profits as the gross income of such foreign corporation for the taxable year from sources within the United States bears to its gross income from all sources for such taxable year, and

(B) an amount equal to 85 per centum of the dividends received out of that part of its earnings or profits specified in clause (1) of the first sentence of section 115 (a) accumulated after the beginning of such uninterrupted period, but such amount shall not exceed an amount which bears the same ratio to 85 per centum of such dividends received out of such accumulated earnings or profits as the gross income of such foreign corporation from sources within the United States for the portion of such uninterrupted period ending at the beginning of such taxable year bears to its gross income from all sources for such portion of such uninterrupted period.

For determination of earnings or profits distributed in any taxable year, see section 115 (b).

(c) **Net operating loss of preceding year—**(1) **Amount of credit.** The amount of net operating loss (as defined in paragraph (2)) of the corporation for the preceding taxable year (if beginning after December 31, 1937) but not in excess of (A) the section 102 net income for the taxable year, in the case of the tax imposed by section 102; (B) the Supplement P net income for the taxable year, in the case of the computations required under Supplement P; or (C) the Subchapter A net income for the taxable year, in the case of the tax imposed under Subchapter A.

(2) **Definition.** As used in this section the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the following exceptions and limitations—

(A) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114(b) (2), (3), or (4);

(B) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations.

In the case of a taxable year beginning after December 31, 1937, and before January 1, 1939, the term "net operating loss" means net operating loss as defined in section 26(c) of the Revenue Act of 1938, 52 Stat. 467.

(C) For the purposes of this paragraph, the net operating loss deduction provided in section 122 shall not be allowed.

(d) **Bank affiliates.** In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933), the amount of the

earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes. The aggregate of the credits allowable under this subsection for all taxable years beginning after December 31, 1935, shall not exceed the amount required to be devoted under such section 5144 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year.

(e) Repealed. Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (1), 59 Stat. 570.

(f) Dividends paid credit. For corporation dividends paid credit, see section 27.

(g) Consent dividends credit. For corporation consent dividends credit, see section 28.

(h) Credit for dividends paid on certain preferred stock.

(1) Amount of credit. In the case of a public utility, (A) for a taxable year beginning on January 1, 1951, and ending on December 31, 1951, an amount equal to 28 per centum of the lesser of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year, (B) for a taxable year beginning after March 31, 1951, and before April 1, 1954, an amount equal to 27 per centum of the lesser of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year, and (C) for a taxable year beginning after March 31, 1954, an amount equal to 30 per centum of the lower of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year. For the purposes of the credit provided in this subsection the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending prior to October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for the purposes of this paragraph be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated. The credit provided in this subsection shall be subtracted from the basic surtax credit provided in section 27.

(2) Definitions. As used in this subsection, subsection (b), and sections 13 and 15—

(A) Public utility. The term "public utility" means a corporation engaged in the furnishing of telephone service or in the sale of electric energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(B) Preferred stock. The term "preferred stock" means stock issued prior to October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock. Stock issued on or

after October 1, 1942, shall be deemed for the purposes of this paragraph to have been issued prior to October 1, 1942, if it was issued (including issuance either by the same or another corporation in a transaction which is a reorganization, as defined in section 112(g) (1), or a transaction to which section 112(b) (10), or so much of section 112(d) or (e) as relates to section 112(b) (10), is applicable, or which is a transaction subject to Supplement R) to refund or replace bonds or debentures issued prior to October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this sentence), but only to the extent that the par or stated value of the new stock does not exceed the par, stated, or face value of the bonds or debentures issued prior to October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace. The determination of whether stock was issued to refund or replace bonds or debentures issued prior to October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Commissioner with the approval of the Secretary.

(i) **Western Hemisphere trade corporations.** In the case of a western hemisphere trade corporation (as defined in section 109)—

(1) **Calendar year 1951.** In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, an amount equal to 28 per centum of its normal-tax net income computed without regard to the credit provided in this subsection.

(2) **Taxable years beginning after March 31, 1951, and before April 1, 1954.** In the case of a taxable year beginning after March 31, 1951, and before April 1, 1954, an amount equal to 27 per centum of its normal-tax net income computed without regard to the credit provided in this subsection.

(3) **Taxable years beginning after March 31, 1954.** In the case of a taxable year beginning after March 31, 1954, an amount equal to 30 per centum of its normal-tax net income computed without regard to the credit provided in this subsection. 53 Stat. 18, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(j), 53 Stat. 869; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 105(d), (e) (1), 126(1) (2), 132(a), 133, 56 Stat. 806, 807, 825, 828, 830; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 116, Title II, § 202(c), 58 Stat. 36, 53; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (1, 4), 59 Stat. 570; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, §§ 121(g) (1), 122, 64 Stat. 918; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 202(a), (b), 64 Stat. 1216; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 122, Title III, § 311(a), 65 Stat. 469, 487.

Historical Note

1951 Amendments. Subsec. (b) (1), (2), amended by Act Oct. 20, 1951, § 122(a), which restated paragraph (1) and rewrote paragraph (2) to reflect the increase in taxes for calendar year 1951, and taxable years beginning after Mar. 31, 1951, and before Apr. 1, 1954, and taxable years beginning after Mar. 31, 1954. Subsec. (b) (3) added by Act Oct. 20, 1951, § 311(a).

Subsec. (h) (1) amended by Acts Oct. 20, 1951, § 122(b) and Jan. 3, 1951, § 202(a). Act Oct. 20, 1951, reduced the credit allowable for taxable year beginning on Jan. 1, 1951, and ending on Dec.

31, 1951, from 30 per cent to 28 per cent, for taxable years beginning Mar. 31, 1951 and ending before April 1, 1954 one more percentage point to 27 per cent, and to increase the credit allowable for taxable years beginning after Mar. 31, 1954 by three percentage points to 30 per cent. Act Jan. 3, 1951 reduced the credit allowable on taxable years beginning after June 30, 1950, 1 percentage point from 31 per centum to 30 per centum.

Subsec. (i) amended by Acts Oct. 20, 1951, § 122(c), and Jan. 3, 1951, § 202(b). Act Oct. 20, 1951, reduced the credit allowable for calendar year 1951 to 28 per

cent from 30 per cent to further reduce it to 27 per cent for taxable years beginning after Mar. 31, 1951 and before Apr. 1, 1954, and to increase it to 30 per cent for taxable years beginning after Mar. 31, 1954. Act Jan. 3, 1951 reduced the credit allowable 1 per centage point from 31 per centum to 30 per centum.

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, § 122(a), to state that the sum of the dividends-received credit shall be and that it shall apply to dividends received after Aug. 31, 1950.

Subsec. (h) (1) amended by Act Sept. 23, 1950, § 122(b), to provide that, for the calendar year 1950, the credit is to be an amount equal to 33% of the lesser of (1) the amount of dividends paid on the preferred stock of the public-utility company, or (2) the excess of the adjusted net income of the public-utility company over its dividends-received credit for such taxable year.

Subsec. (h) (2) amended by Act Sept. 23, 1950, § 121(g) (1), which substituted "As used in this subsection, subsection (b), and sections 13 and 15" in lieu of "As used in this subsection and section 15(a)."

Subsec. (i) added by Act Sept. 23, 1950, § 122(c).

1945 Amendment. Subsec. (b), amended by Act Nov. 8, 1945, § 122(g) (4), which struck out "reduced by the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in subsection (e)".

Subsec. (e), which related to credit for income subject to excess profits tax, repealed by Act Nov. 8, 1945, § 122(g) (1).

1944 Amendment. Subsec. (e) amended by Act Feb. 25, 1944, which struck out "90 per centum" and inserted "95 per centum".

Subsec. (h) (1) amended by Act Feb. 25, 1944, which inserted second sentence.

Subsec. (h) (2) (B) amended by Act Feb. 26, 1944, which inserted last sentence.

1942 Amendment. Subsecs. (a) (b), (c) (1, 2), amended and subsecs. (c) (2) (C), (e-h), added by Act Oct. 21, 1942.

1939 Amendment. Subsec. (c), (2) amended by Act June 29, 1939.

Effective Date of 1951 Amendments. Amendment of subsec. (b) (3) made applicable only with respect to taxable years beginning after Dec. 31, 1950 by section 311(c) of Act Oct. 20, 1951.

Amendment of subsecs. (b) (1) (2), (h), and (i) as applicable only with respect to taxable years beginning after Mar. 31, 1951, and to taxable years beginning on Jan. 1, 1951, and ending on Dec. 31, 1951, see note set out under section 13 of I.R.C. 1939.

Section 202(c) of Act Jan. 3, 1951, provided that the amendments of subsecs. (h) (1) (B) and (i) (1) should be applicable with respect to taxable years beginning on or after July 1, 1950.

Effective Date of 1950 Amendment. Amendment of section by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1950, see note set out under section 13 of I.R.C. 1939.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, was made applicable to taxable years beginning after Dec. 31, 1945, by section 122(g) thereof.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, § 202(c), was made applicable to taxable years beginning after Dec. 31, 1943, by section 201 thereof.

Act Feb. 25, 1944, § 116(a, b), were made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date of 1942 Amendments. Amendments of subsecs. (a), (b), (e)—(h), by Act Oct. 21, 1942, §§ 126(i) (2), 105(e), (d), 133, were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment of subsec. (c) by Act Oct. 21, 1942, was made effective by section 132(e) thereof, as follows:

"(e) The amendments made by this section [to sections 26(c), 27(b, c), 504(a)] shall be applicable only with respect to taxable years beginning after December 31, 1939, but shall be applicable in the computations with respect to previous taxable years for the purpose of ascertaining the amount of any dividend carry-over from such previous taxable years."

Dividends Received on Preferred Stock of Public Utility. Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title VI, § 612, 65 Stat. 568, provided that: "In the case of taxable years beginning before April 1, 1951, any reference in section 15(a) or 26(b) of the Internal Revenue Code [Section 15(a) or 26(a) of I.R.C. 1939] to dividends received on the preferred stock of a public utility shall be construed as referring only to dividends received on the preferred stock of a public utility with respect to which the credit provided in section 26(h) of such Code [1939] for dividends paid was allowable."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 24, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

COMPUTATION OF NET INCOME

§ 27

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also,

Acts Jan. 3, 1951, 1950 U.S. Code Cong. Service, p. 4027; Sept. 23, 1950, 1950 U.S. Code Cong.Service, p. 3053; Nov. 8, 1945, 1945 U.S. Code Cong.Service, p. 814.

§ 27. Corporation dividends paid credit

(a) **Definition in general.** As used in this chapter with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in subsection (b);

(2) The dividend carry-over to such year, computed as provided in subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1939), exceeds the amount of the credit provided in section 26(c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest. A renewal (however evidenced) of an indebtedness shall be considered an indebtedness.

(b) **Basic surtax credit.** As used in this chapter the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in section 28, and reduced by the amount of the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations;

(2) The net operating loss credit provided in section 26(c) (1);

(3) The bank affiliate credit provided in section 26(d).

The aggregate of the amounts under paragraphs (2) and (3) shall not exceed (A) the section 102 net income for the taxable year, in the case of the tax imposed by section 102; (B) the Supplement P net income for the taxable year, in the case of the computations required under Supplement P; or (C) the Subchapter A net income for the taxable year, in the case of the tax imposed under Subchapter A.

(c) **Dividend carry-over.** There shall be computed with respect to each taxable year of a corporation a dividend carry-over to such year from the two preceding taxable years, which shall consist of the sum of—

(1) The amount of the basic surtax credit for the second preceding taxable year, reduced by the Subchapter A net income for such year, and further reduced by the amount, if any, by which the Subchapter A net income for the first preceding taxable year exceeds the sum of—

(A) The basic surtax credit for such year; and

(B) The excess, if any, of the basic surtax credit for the third preceding taxable year over the Subchapter A net income for such year; and

(2) The amount, if any, by which the basic surtax credit for the first preceding taxable year exceeds the Subchapter A net income for such

year. In the case of a preceding taxable year referred to in this subsection, the Subchapter A net income shall be determined as if the corporation was, under the law applicable to such taxable year, a personal holding company.

(d) **Dividends in kind.** If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the amount with respect thereto which shall be used in computing the basic surtax credit shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

(e) **Dividends in obligations of the corporation.** If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

(f) **Taxable stock dividends.** In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115(f), the amount with respect thereto which shall be used in computing the basic surtax credit shall be the fair market value of the stock or the stock right at the time of the payment.

(g) **Distributions in liquidation.** In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the basic surtax credit under this section, be treated as a taxable dividend paid.

(h) **Preferential dividends.** The amount of any distribution (although each portion thereof is received by a shareholder as a taxable dividend), not made in connection with a consent distribution (as defined in section 28(a) (4)), shall not be considered as dividends paid for the purpose of computing the basic surtax credit, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

For a distribution made in connection with a consent distribution, see section 28.

(i) **Nontaxable distributions.** If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this chapter for the period in which the distribution is made, such part shall not be included in computing the basic surtax credit. 53 Stat. 19, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 222, 53 Stat. 879; Mar. 17, 1941, c. 21, § 1, 55 Stat. 44; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 132(b, c), 56 Stat. 829.

Historical Note

1942 Amendment. Subsecs. (b), last sentence, and (c) amended by Act Oct. 21, 1942. 1941 Amendment. Subsec. (c) amended by Act Mar. 17, 1941.

1939 Amendment. Subsec. (a) (4), last sentence, added by Act June 29, 1939.

Effective Date of 1942 Amendment. Amendment of subssecs. 1(b) and (c) by Act Oct. 21, 1942, §§ 132 (b, c), were made effective by section 132(e) thereof as follows: "(e) The amendments made by this section [to sections 26(c), 27(b, c), 504 (a)] shall be applicable only with respect to taxable years beginning after December 31, 1939, but shall be applicable in the computations with respect to previous taxable years for the purpose of ascertaining the amount of any dividend carry-over from such previous taxable years."

Effective Date of 1941 Amendment. Section 2 of Joint Res. Mar. 17, 1941 pro-

vided that the amendment of subsec. (c) should be effective as of Feb. 11, 1939.

Effective Date of 1939 Amendment. Section 222(b) of Act June 29, 1939 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1938.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 28. Consent dividends credit

(a) **Definitions.** As used in this section—

(1) **Consent stock.** The term "consent stock" means the class or classes of stock entitled, after the payment of preferred dividends (as defined in paragraph (2)), to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings or profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) **Preferred dividends.** The term "preferred dividends" means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings or profits may be made within the taxable year.

(3) **Consent dividends day.** The term "consent dividends day" means the last day of the taxable year of the corporation, unless during the last month of such year there have occurred one or more days on which was payable a partial distribution (as defined in paragraph (5)), in which case it means the last of such days.

(4) **Consent distribution.** The term "consent distribution" means the distribution which would have been made if on the consent dividend day (as defined in paragraph (3)) there had actually been distributed in cash and received by each shareholder making a consent filed by the corporation under subsection (d), the specific amount stated in such consent.

(5) **Partial distribution.** The term "partial distribution" means such part of an actual distribution, payable during the last month of the taxable year of the corporation, as constitutes a distribution on the whole or any part of the consent stock (as defined in paragraph (1)), which part of the distribution, if considered by itself and not in connection with a consent distribution (as defined in paragraph (4)), would be a preferential distribution, as defined in paragraph (6).

(6) **Preferential distribution.** The term "preferential distribution" means a distribution which is not pro rata, or which is with preference to any share of stock as compared with other shares of the same class, or to any class of consent stock as compared with any other class of consent stock.

(b) **Corporations not entitled to credit.** A corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless, at the close of such year, all preferred dividends (for the taxable year and, if cumulative, for prior taxable years) have been paid;
or

(2) If, at any time during such year, the corporation has taken any steps in, or in pursuance of a plan of, complete or partial liquidation of all or any part of the consent stock.

(c) **Allowance of credit.** There shall be allowed to the corporation, as a part of its basic surtax credit for the taxable year, a consent dividends credit equal to such portion of the total sum agreed to be included in the gross income of shareholders by their consents filed under subsection (d) as it would have been entitled to include in computing its basic surtax credit if actual distribution of an amount equal to such total sum had been made in cash and each shareholder making such a consent had received, on the consent dividends day, the amount specified in the consent.

(d) **Shareholders' consents.** The corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless it files (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) with its return for such year, or within one year after the date of enactment of the Revenue Act of 1942, in the case of a corporation which is a personal holding company for the taxable year with respect to which it claims the benefits of this section, signed consents made under oath by persons who were shareholders, on the last day of the taxable year, of the corporation, of any class of consent stock; and

(2) Unless in each such consent the shareholder agrees that he will include as a taxable dividend, in his return for the taxable year in which or with which the taxable year of the corporation ends, a specific amount; and

(3) Unless the consents filed are made by such of the shareholders and the amount specified in each consent is such, that the consent distribution would not have been a preferential distribution—

(A) If there was no partial distribution during the last month of the taxable year of the corporation, or

(B) If there was such a partial distribution, then when considered in connection with such partial distribution; and

(4) Unless in each consent made by a shareholder who is taxable with respect to a dividend only if received from sources within the United States, such shareholder agrees that the specific amount stated in the consent shall be considered as a dividend received by him from sources within the United States; and

(5) Unless each consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143 (b) or 144 to be deducted and withheld by the corporation if the amount specified in the consent had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. The amount accompanying the consent shall be credited against the tax imposed by section 211(a) or 231(a) upon the shareholder.

(e) **Consent distribution as part of entire distribution.** If during the last month of the taxable year with respect to which shareholders' consents are filed by the corporation under subsection (d) there is made a partial distribution, then, for the purposes of this chapter, such partial distribution and the consent distribution shall be considered as having been made in connection with each other and each shall be considered together with the other as one entire distribution.

(f) **Taxability of amounts specified in consents.** The total amount specified in a consent filed under subsection (d) shall be included as a taxable dividend in the gross income of the shareholder making such consent, and, if the shareholder is taxable with respect to a dividend only

if received from sources within the United States, shall be included in the computation of his tax as a dividend received from sources within the United States; regardless of—

(1) Whether he actually so includes it in his return; and

(2) Whether the distribution by the corporation of an amount equal to the total sum included in all the consents filed, had actual distribution been made, would have been in whole or in part a taxable dividend; and

(3) Whether the corporation is entitled to any consent dividends credit by reason of the filing of such consents, or to a credit less than the total sum included in all the consents filed.

(g) **Corporate shareholders.** If the shareholder who makes the consent is a corporation, the amount specified in the consent shall be considered as part of its earnings or profits for the taxable year, and shall be included in the computation of its accumulated earnings and profits.

(h) **Basis of stock in hands of shareholders.** The amount specified in a consent made under subsection (d) shall, for the purpose of adjusting the basis of the consent stock with respect to which the consent was given, be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only in an amount which bears the same ratio to the consent dividends credit of the corporation as the amount of such shareholder's consent stock bears to the total amount of consent stock with respect to which consents are made.

(i) **Effect on capital account of corporation.** The amount of the consent dividends credit allowed under subsection (c) shall be considered as paid in surplus or as a contribution to the capital of the corporation, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced.

(j) **Amounts not included in shareholder's return.** The failure of a shareholder of consent stock to include in his gross income for the proper taxable year the amount specified in the consent made by him and filed by the corporation, shall have the same effect, with respect to the deficiency resulting therefrom, as is provided in section 272(f) with respect to a deficiency resulting from a mathematical error appearing on the face of the return. 53 Stat. 21, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 186(e) (1), 56 Stat. 897.

Historical Note

References in Text. Date of the enactment of the Revenue Act of 1942, referred to in subsec. (d) (1), was Oct. 21, 1942, 4:30 p. m., E.W.T.

1942 Amendment. Subsec. (d) (1) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Amendment of subsec. (d) (1) by Act Oct. 21, 1942, § 186(e) (1), was made effective by section 186(f) and (g) thereof as follows:

"(f) The amendments made by subsections (a) to (e), inclusive [to sections 28 (d) (1), 115(a, b), 504(c) (1, 2) and 506 (c) (1)] shall be effective as of the date of enactment of the laws amended thereby.

"(g) The amendments made by subsections (a) to (d) inclusive [to sections 115(a, b), 504(c) (1, 2) and 506(c) (1)], shall not apply with respect to any distribution, which is a dividend solely by reason of the last sentence of section 115 (a) of the applicable revenue law, made prior to the date of enactment of this

Act [Oct. 21, 1942, 4:30 p. m., E.W.T.] by a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which it is made under section 504(c) or section 506 [of I.R.C.1939] or a corresponding provision of a prior income tax law, is a personal holding company under the law applicable to such taxable year, unless—

"(1) The corporation (under regulations prescribed by the Commissioner with the approval of the Secretary) files, within one year after the date of the enactment of this Act, a claim for the benefit of this section on account of such distribution;

"(2) Such claim is accompanied by signed consents made under oath by each person to whom the corporation made such distribution agreeing to the inclusion of the amount of such distribution to him in his gross income as a taxable dividend. If any such person is no longer in existence or is under disa-

bility then the consent may be made by his legal representative; and

"(3) Each such consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143(b) or 144 of the applicable revenue law to be deducted and withheld by the corporation if the amount of the distribution to the shareholder had been paid to the shareholder in cash as a dividend. The amount accompanying such consent shall be credited against the tax under the applicable revenue law imposed by section 211(a) or 231(a) [of I.R.C.1939] upon the shareholder."

Overpayments and Deficiencies. Section 186(h) of Act Oct. 21, 1942 provided as follows: "(h) If the refund or credit of any overpayment for any taxable year, to the extent resulting from the application of subsections (e) and (g) of this section [amending sections 28(d) (1), 115(a, b), 501(c) (1, 2) and 506(c) (1)] is prevented on the date of the enactment of this Act [Oct. 21, 1942, 4:30 p m., E.W.T.] or within one year from such date, then, notwithstanding any other provision of law or rule of law (other than this subsection and other than section 3761 of the Internal Revenue Code [1939] or section 3229 of the Revised Statutes, or such section as amended by section 815 of the Revenue Act of 1938, relating to compromises), such overpayment shall be refunded or credited in the same manner as in the case of an income tax erroneously collected if claim therefor is filed within one year from the date of the enactment of this Act [Oct. 21, 1942, 4:30 p m., E.W.T.]. If the assessment or collection of any

deficiency for any taxable year, to the extent resulting from the application of subsections (e) and (g) of this section [amending sections 28(d) (1), 115(a, b), 501(c) (1, 2) and 506(c) (1)], is prevented on the date of the filing of the shareholders' consents referred to in subsection (e) [amending section 28(d) (1)] or on the date of filing of the claim referred to in subsection (g) (1) [set out in effective date note above] or within one year from the date of filing of such consents or claim, as the case may be, then, notwithstanding any other provision of law or rule of law, such deficiency shall be assessed and collected if assessment is made within one year from the date of the filing of such consents or claim, as the case may be. The failure of a shareholder to include in his gross income for the proper taxable year the amount specified in the consent made by him referred to in subsection (g) (2) [set out in effective date note above] shall have the same effect, with respect to the deficiency resulting therefrom, as is provided in section 272(f) of the applicable revenue law with respect to a deficiency resulting from a mathematical error appearing on the face of the return."

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

PART III.—CREDITS AGAINST TAX

§ 31. Taxes of foreign countries and possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax (other than the tax imposed by subchapter E, relating to tax on self-employment income), to the extent provided in section 131. 53 Stat. 24, amended Aug. 28, 1950, c. 809, Title II, § 208(d) (3), 64 Stat. 544.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by inserting after "the tax" the words "(other than * * * income)".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 32. Taxes withheld at source

The amount of tax withheld at the source under section 143 or 144 shall be allowed as a credit against the tax. 53 Stat. 24.

§ 33. Credit for overpayments

For credit against the tax of overpayments of taxes imposed by this chapter for other taxable years, see section 322. 53 Stat. 24.

§ 34. Repealed. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 106(c) (2), 58 Stat. 31.

Historical Note

Section added by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 172(f) (2), 56 Stat. 893, and amended June 9, 1943, 7 p. m., E.W.T., c. 120, § 2(b) (1), 57 Stat. 139; Oct. 28, 1943, c. 290, § 2(b), 57 Stat. 584, related to cross reference regarding credit against victory tax.

Effective Date. Section 101 of Act Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, 58 Stat. 26, provided that the repeal of this section was made applicable to taxable years beginning after Dec. 31, 1943.

§ 35. Credit for tax withheld on wages

The amount deducted and withheld as tax under Subchapter D of Chapter 9 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the tax imposed by this chapter for the taxable year beginning in such calendar year. If more than one taxable year begins in any such calendar year such amount shall be allowed as a credit against the tax for the last taxable year so beginning. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 172(f) (2), 56 Stat. 893, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 3, 57 Stat. 139.

Historical Note

1943 Amendment. Act June 9, 1943, substituted above text for former cross-reference to section 466(e).

Effective Date of 1942 Amendment. Section 172(g) of Act Oct. 21, 1942, provided that the amendment of this section should be effective Jan. 1, 1943, applicable to all wages (as defined in Part II

of subchapter D) paid on or after such date.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

§ 41. General rule

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

For use of inventories, see section 22(c).
53 Stat. 24.

§ 42. Period in which items of gross income included

(a) **General rule.** The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under section 182) accrued only by reason of the death of the taxpayer shall not be included in computing net income for the period in which falls the date of the taxpayer's death.

(b) **Noninterest-bearing obligations issued at discount.** If, in the case of a taxpayer owning any noninterest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals or owning an obligation described in paragraph (2) of subsection (d), the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his net income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year beginning after December 31, 1940, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless upon application by the taxpayer the Commissioner permits him subject to such conditions as the Commissioner deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition (or, in the case of an obligation described in paragraph (2) of subsection (d), the date of acquisition of the series E bond involved) and the first day of such taxable year shall also be treated as income received in such taxable year.

(c) **Short-term obligations issued on discount basis.** In the case of any obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

(d) **Matured United States Savings Bonds.** In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under the Second Liberty Bond Act retains his investment in the maturity value of such series E bond in an obligation, other than a current income obligation, which matures not more than ten years from the date of maturity of such series E bond, the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. The provisions of this subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's net income is computed upon the basis of the accrual method of accounting or for which an election made by the taxpayer under subsection (b) is applicable. 53 Stat. 24, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 114, 115(a), 55 Stat. 697, 698; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 134(a), 56 Stat. 830; Mar. 26, 1951, c. 19, § 2, 65 Stat. 26.

Historical Note

References in Text. The Second Liberty Bond Act, referred to in subsec. (d), is classified to sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758,

760, 764-766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

1951 Amendment. Subsec. (b) amended by Act Mar. 26, 1951, § 2(1), (2), which

inserted "or owing an * * * of subsection (d)" after "stated intervals" and "(or, in the case * * * E bond involved)" after "acquisition".

Subsec. (d) added by Act Mar. 23, 1951, § 2(3).

1942 Amendment. Subsec. (a), last sentence, amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a), formerly entire section, amended by Act Sept. 20, 1941, § 114, which inserted "(a) General rule." before the first sentence thereof.

Subsecs. (b) and (c) added by Act Sept. 20, 1941, §§ 114, 115(a), respectively.

Effective Date of 1951 Amendment. Section 2 of Act Mar. 26, 1951, provided in part that the amendments of subsecs. (b) and (d) should take effect with respect to taxable years ending after Mar. 26, 1951.

Effective Date of 1942 Amendment. Section 134(f) of Act Oct. 21, 1942 provided that the amendment of subsec. (a) was made applicable to taxable years beginning after Dec. 31, 1942.

Effective Date of 1941 Amendments. Section 118 of Act Sept. 20, 1941 provided that the amendment of this section by said Act Sept. 20, 1941, § 114, was made applicable to taxable years beginning after Dec. 31, 1940.

Section 115c of Act Sept. 20, 1941 provided that the amendment of this section by said Act Sept. 20, 1941, § 115(a) was made applicable to taxable years ending after Feb. 23, 1941.

Awards Under Railway Mail Pay Act of 1916; Interest on Deficiencies; Period of Deficiency Assessments. Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title VI, § 611(a), 65 Stat. 563, provided that: "Notwithstanding section 42 of the Internal Revenue Code [this section], amounts received, pursuant to an award under the order issued under the Railway Mail Pay Act of 1916 [sections 524-

541, 542-563 of Title 39] by the Interstate Commerce Commission on December 4, 1950, as compensation for the transportation of mail during 1950 and prior years shall be deemed to be income which accrued in the taxable years in which the services to which such compensation relates were rendered. Notwithstanding section 292 of such code [section 292 of I.R.C.1939], no interest shall be assessed or collected for any period prior to July 1, 1951, with respect to that part of any deficiency which the Secretary determines to be attributable to the inclusion of income in a taxable year by reason of the application of this section. Any deficiency attributable to the inclusion of income in any taxable year by reason of the application of this section may be assessed at any time prior to the expiration of the period for assessment with respect to the taxable year of the taxpayer which includes December 4, 1950, notwithstanding the provisions of section 275 of the Internal Revenue Code [section 275 of I.R.C.1939], or any other provision of law or rule of law which would otherwise prevent such assessment."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 26, 1951, see 1951 U.S.Code Cong.Service, p. 1372.

§ 43. Period for which deductions and credits taken

The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts (except amounts includible in computing a partner's net income under section 182) accrued as deductions and credits only by reason of the death of the taxpayer shall not be allowed in computing net income for the period in which falls the date of the taxpayer's death. 53 Stat. 24, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 134(b), 56 Stat. 830.

Historical Note

1942 Amendment. Last sentence amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 134(f) of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1942.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 44. Installment basis

(a) **Dealers in personal property.** Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(b) **Sales of realty and casual sales of personality.¹** In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price (or, in case the sale or other disposition was in a taxable year beginning prior to January 1, 1934, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) **Change from accrual to installment basis.** If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

(d) **Gain or loss upon disposition of installment obligations.** If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This subsection shall not apply to the transmission at death of installment obligations if there is filed with the Commissioner, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same

proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. If an installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and under section 112(b) (6) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation, then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation. 53 Stat. 24.

1 So in original. Probably should read "personalty."

§ 45. Allocation of income and deductions

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. 53 Stat. 25, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 128(b), 58 Stat. 48.

Historical Note

1944 Amendment. Act Feb. 25, 1944, amended section by striking out "gross income or deductions" and inserting in lieu thereof "gross income, deductions, credits, or allowances".

Effective Date of 1944 Amendment. Section 128(c) of Act Feb. 25, 1944, provides as follows: "The amendments made by this section [to section 45, and adding section 129] shall be effective with respect to taxable years beginning after December 31, 1943. The determination of the law applicable to prior taxable years shall be made as if this section had not been enacted and without inferences drawn from the fact that the

amendment made by this section is not expressly made applicable to prior taxable years."

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 46. Change of accounting period

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 47. 53 Stat. 26.

§ 47. Returns for a period of less than twelve months

(a) **Returns for short period resulting from change of accounting period.** If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

(b) **Income computed on basis of short period.** Where a separate return is made under subsection (a) on account of a change in the account-

ing period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(c) Income placed on annual basis

(1) **General rule.** If a separate return is made under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made (referred to in this subsection as "the short period"), shall be placed on an annual basis by multiplying the amount thereof by twelve, and dividing by the number of months in the short period. The tax shall be such part of the tax computed on such annual basis as the number of months in the short period is of twelve months.

(2) **Exception.** If the taxpayer establishes the amount of his net income for the period of twelve months beginning with the first day of the short period, computed as if such twelve-month period were a taxable year, under the law applicable to such year, then the tax for the short period shall be reduced to an amount which is such part of the tax computed on the net income for such twelve-month period as the net income computed on the basis of the short period is of the net income for the twelve-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file his return without the application of this paragraph. If the taxpayer (other than a corporation) was not in existence at the end of the twelve-month period, or if the taxpayer is a corporation and has disposed of substantially all its assets prior to the end of such twelve-month period, then in lieu of the net income for such twelve-month period there shall be used for the purposes of this paragraph the net income for the twelve-month period ending with the last day of the short period. The tax computed under this paragraph shall in no case be less than the tax computed on the net income for the short period without placing such net income on an annual basis. The benefits of this paragraph shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require (but not after the time prescribed for the filing of the return for the first taxable year which ends on or after twelve months after the beginning of the short period), makes application therefor in accordance with such regulations. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph. The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary for the application of this paragraph.

(d) Repealed. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 107(a), 58 Stat. 31.

(e) Reduction of credits against net income. In the case of a return made for a fractional part of a year under section 146(a) (1), the exemptions provided in section 25(b) shall be reduced to amounts which bear the same ratio to the full exemptions so provided as the number of months in the period for which return is made bears to twelve months.

(f) Closing of taxable year in case of jeopardy

For closing of taxable year in case of jeopardy, see section 146.

(g) Returns where taxpayer not in existence for twelve months. In the case of a taxpayer not in existence during the whole of an annual accounting period ending on the last day of a month, or, if the taxpayer has no such annual accounting period or does not keep books, during the whole of a calendar year, the return shall be made for the fractional part of the year during which the taxpayer was in existence. 53 Stat. 26,

amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 135 (a, c), 56 Stat. 834, 835; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 104, 107 (a), 58 Stat. 31; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 10 (c), 58 Stat. 239; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102 (b) (3), 59 Stat. 559.

Historical Note

1945 Amendment. Subsec. (e) amended generally by Act Nov. 8, 1945, § 102 (b) (3).

1944 Amendment. Subsec. (d) repealed by Act Feb. 25, 1944. Prior to its repeal, said subsec. read as follows: "(d) **Earned Income.**—The Commissioner with the approval of the Secretary shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing such income on an annual basis) to cases where the taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it appears that for the period for which the return is so made he has received earned income."

Subsec. (e) amended by Acts May 29, 1944, and Feb. 25, 1944. Act May 29, 1944 struck out "personal exemption and credit for dependents" and "credits provided for in section 25(b)", and inserted in lieu thereof "normal tax exemption and surtax exemption" and "the full normal tax exemption (in the case of the normal tax) and the full surtax exemptions (in the case of the surtax)", respectively. Act Feb. 25, 1944, struck out "except a return made under subsection (a), on account of a change in the accounting period" following "fractional part of a year," and inserted in lieu thereof "under section 146(a) (1)".

1942 Amendment. Subsec. (c) amended and subsec. (g) added by Act Oct. 21, 1942.

Effective Date of 1945 Amendment. Section 102(c) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years begin-

ning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendments. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Section 101 of Act Feb. 25, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 136 of Act Feb. 25, 1944 provided that "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 803.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1058.

§ 48. Definitions

When used in this chapter—

(a) **Taxable year.** "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) **Fiscal year.** "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(c) **"Paid or incurred", "paid or accrued".** The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part.

(d) **Trade or business.** The term "trade or business" includes the performance of the functions of a public office. 53 Stat. 26, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 135(d), 56 Stat. 835.

Historical Note

1942 Amendment. Subsec (a), second sentence, amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sec-

tions 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

PART V.—RETURNS AND PAYMENT OF TAX

§ 51. Individual returns

(a) **Requirement.** Every individual having for the taxable year a gross income of \$600 or more shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury. Such return shall set forth in such cases, and to such extent, and in such detail, as the Commissioner with the approval of the Secretary may by regulations prescribe, the items of gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as may be prescribed by such regulations.

(b) Husband and wife.

(1) **In general.** A husband and wife may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

(2) **Nonresident alien.** No joint return may be made if either the husband or wife at any time during the taxable year is a nonresident alien.

(3) **Different taxable years.** No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 47(a).

(4) **Joint return after death.** In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (A) no return for the taxable year has been made by the decedent, (B) no executor or administrator has been appointed, and (C) no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(5) **Determination of status.** For the purposes of this section—

(A) the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(i) if both have the same taxable year—as of the close of such year; and

(ii) if one dies before the close of the taxable year of the other—as of the time of such death; and

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(6) **Tax in case of joint return.** For determination of combined normal tax and surtax under section 11 and section 12(b) in case of joint return under this subsection, see section 12(d). For tax in case of joint return of husband and wife electing to pay the tax under Supplement T, see section 400.

(c) **Persons under disability.** If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) **Repealed.** Aug. 27, 1949, c. 517, § 4(b), 68 Stat. 668.

(e) **Fiduciaries**

For returns to be made by fiduciaries, see section 142

(f) **Tax computed by collector in case of wage earners**

(1) **Return requirements.** An individual entitled to elect to pay the tax imposed by Supplement T whose gross income is less than \$5,000 and is entirely from one or more of the following sources: Remuneration for services performed by him as an employee, dividends, or interest; and whose gross income from sources other than wages, as defined in section 1621(a), does not exceed \$100, shall at his election be relieved, by using the form prescribed as the form for the return for the purposes of this subsection, from showing on the return the tax imposed by this chapter. In such case the tax shall be computed by the collector. In the case of a head of a household electing the benefits of this subsection, the tax shall be computed by the collector under Supplement T without regard to the taxpayer's status as head of a household.

(2) **Result of computation.** After the collector has computed the tax, he shall mail to the taxpayer a notice stating the amount determined by the collector as payable and making demand therefor.

(3) **Regulations.** The Commissioner with the approval of the Secretary shall prescribe regulations for carrying out this subsection, and such regulations may provide for the application of the rules of this subsection to cases where the gross income includes items other than those enumerated in paragraph (1), to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than \$100 but not more than \$200, and to cases where the gross income is \$5,000 or more but not more than \$5,200. Such regulations shall provide

(A) for the application of this subsection in the case of husband and wife, including provisions determining when a joint return under this subsection may be permitted or required and what constitutes a joint return, whether the liability shall be joint and several, and whether one spouse may make return under this subsection and the other without regard to this subsection, and (B) whether and the extent to which the benefits of this subsection may be availed of, in the case of taxable years beginning in the calendar year 1944, by persons required to make or making payments of estimated tax with respect to any such taxable year.

(4) **Method of election.** The election to have the benefits of this subsection shall be made by making return on the form prescribed as the form

for the return for the purposes of this subsection. An election so made shall constitute an election to pay the tax imposed by Supplement T.

(g) Joint return after filing separate return

(1) **In general.** If an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (b) of this section, and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife in such a case shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid.

(2) **Payments required before joint return can be made.** A joint return can be made under paragraph (1) only if there is paid in full at or before the time of the filing of the joint return—

(A) all amounts previously assessed with respect to either spouse for such taxable year;

(B) all amounts shown as the tax by either spouse upon his separate return for such taxable year; and

(C) any amount determined, at the time of the filing of the joint return, as a deficiency with respect to either spouse for such taxable year if, prior to such filing, a notice under section 272 (a) of such deficiency has been mailed.

(3) **Time for making joint return.** A joint return cannot be made under paragraph (1)—

(A) after the expiration of three years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse);

(B) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 272 (a). If the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in such section;

(C) after either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(D) after either spouse has entered into a closing agreement under section 3760 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 3761.

(4) **Elections made in separate return.** If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made.

(5) **Death of spouse.** If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(6) **Additions to the tax.** Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

(A) **Negligence.** If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but

without intent to defraud) at the time of the making of such separate return, then 5 per centum of the total amount of such excess shall be assessed, collected, and paid in the same manner as if it were a deficiency;

(B) **Fraud.** If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 per centum of the total amount of such excess shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2).

(7) **Rules for application of sections 275 and 291.** For the purposes of section 275 (relating to period of limitations upon assessment and collection), and for the purposes of section 291 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(A) where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(B) where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than \$600 of gross income for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(C) where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of \$600 or more for such taxable year—on the date of the filing of such joint return.

(8) **Rule for application of section 322.** For the purposes of section 322 (relating to refunds and credits), a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(9) **Additional time for assessment.** If a joint return is made under this subsection, the period of limitations provided in sections 275 and 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (7) of this subsection).

(10) **Rule for application of section 3809 (a).** For the purposes of section 3809 (a) (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return. 53 Stat. 27, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 7(a), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 112(a), 55 Stat. 696; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 131(c) (1), 136(a), 56 Stat. 828, 836; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 105, 58 Stat. 31; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 11(a, b), 58 Stat. 240; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(c) (1), Title III, § 303, 62 Stat. 114, 115; Aug. 27, 1949, c. 517, § 4(b), 63 Stat. 668; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 301(b) (1), 312(a), 65 Stat. 482.

Historical Note

1951 Amendment. Subsec. (f) (1) amended by Act Oct. 20, 1951, § 301(b) (1), to add the last sentence.

Subsec. (g) added by Act Oct. 20, 1951, § 312(a).

1949 Amendment. Subsec. (d) repealed by Act Aug. 27, 1949. Prior to its repeal, said subsec. read as follows:

"(d) **Signature presumed correct.** The fact that an individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by him."

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948, § 202(c), (1), which struck out "500" and inserted in lieu thereof "\$600" to accommodate the increased exemptions under section 25(b) of I.R.C.1939.

Subsec. (b) amended Act Apr. 2, 1948, § 303, which provides for an extensive revision to reflect the changes made necessary by the income splitting plan.

1944 Amendment. Subsecs. (a) and (b) amended generally by Act May 29, 1944, to incorporate technical changes necessitated by amendments to section 25 and Supp. T of I.R.C.1939.

Subsec. (b) amended by Act Feb. 25, 1944, which inserted "or if husband and wife have different taxable years" between "nonresident alien" and the period at the end thereof.

Subsec. (f) which was added by Act Feb. 25, 1944, amended by Act May 29, 1944, which struck out entire subsec. and inserted in lieu thereof a new subsec. (f).

1942 Amendment. Subsec. (a) amended by Act Oct. 21, 1942, which affected first par. and substituted "\$500" for "\$750" in subpar. (1) and "\$1200" for "\$1,500" in subpars. (2) (A) and (B).

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941.

1940 Amendment. Subsec. (a) amended by Act June 25, 1940.

Effective Date of 1951 Amendment. Section 301(c) of Act Oct. 20, 1951, provided that the amendment should be applicable with respect to taxable years ending after June 30, 1950.

Amendment adding subsec. (g) made applicable only with respect to taxable years beginning after Dec. 31, 1950, by section 312(b) of Act Oct. 20, 1951.

Effective Date of 1949 Amendment. The repeal of subsec. (d) as applicable with respect to any return, statement, or document filed after Aug. 27, 1949, see note set out under section 3809 of I.R.C.1939.

Effective Date of 1948 Amendment. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1822(h) (1)

of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Section 305 of Act Apr. 2, 1948, provided in part that the amendment to this section by section 303 of said Act Apr. 2, 1948, should be applicable to taxable years beginning after Dec. 31, 1947, and that it shall also be applicable to taxable years of both husband and wife beginning on the same day in 1947 if at least one of such taxable years ends in 1948, but if both taxable years begin in 1947 and end in 1948 then they shall be governed by section 108(d) of I.R.C.1939.

Effective Date of 1944 Amendments. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Section 101 of Act Feb. 25, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years, beginning after Dec. 31, 1940.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of I.R.C.1939], shall be applicable only with respect to taxable years beginning after December 31, 1939, by section 9 of said Act."

Computation of Tax in Case of Certain Joint Returns. Effective date of 1951 amendments with respect to computation of tax in case of certain joint returns, see note set out under section 12 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1944—Feb. 24, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 696.

1940—June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Acts Apr. 2, 1948, 1948 U.S. Code Cong.Service, p. 1163; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 52. Corporation returns

(a) **Requirement.** Every corporation subject to taxation under this chapter shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

(b) Cross reference

For provisions relating to consolidated returns, see section 141.

53 Stat. 27, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 159(f), 56 Stat. 860.

Historical Note

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942.

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 53. Time and place for filing returns

(a) Time for filing

(1) **General rule.** Returns made on the basis of the calendar year shall be made on or before the fifteenth day of March following the close of the calendar year, except that in the case of the return of the fiduciary of an estate or trust, the return shall be made on or before the fifteenth day of April following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the fifteenth day of the third month following the close of the fiscal year, except that in the case of the return of the fiduciary of an estate or trust, the return shall be made on or before the fifteenth day of the fourth month following the close of the fiscal year.

(2) **Extension of time.** The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) To whom return made

(1) **Individuals.** Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

(2) **Corporations.** Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland. 53 Stat. 28, amended Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 205(b) (1), 64 Stat. 930.

Historical Note

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 205(b) (1), which added exception clause to both sentences.

Effective Date of 1950 Amendment. Amendment of subsec. (a) (1) by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Sept. 23, 1950, see note set out under section 56 of I.R.C.1939.

Filing of Corporation Returns for Taxable Years Ending After Mar. 31, 1951 and Before Oct. 1, 1951. Section 124 of Act Oct. 20, 1951, 2:07 p. m., E. S. T., c. 621, Title I, Pt. II, 65 Stat. 471, provided that: "In the case of a corporation subject to a tax imposed by chapter 1 of the Internal Revenue Code [chapter 1 of I.R.C. 1939] for a taxable year ending after March 31, 1951, but prior to October 1, 1951, such corporation shall after the date of the enactment of this Act [Oct. 20, 1951] and on or before January 15, 1952, make a return for such taxable year with respect to the tax imposed by chapter 1 of the Internal Revenue Code [1939] for such taxable year. The return required by this section for such taxable year shall constitute the return for such taxable year for all purposes of the Internal Revenue Code [1939]; and no return for such taxable year, with respect to any tax imposed by chapter 1 of such code [chapter 1 of I.R.C.1939], filed on or before the date of the enactment of this Act [Oct. 20, 1951] shall be considered for any of such purposes as a return for such year. The taxes imposed by chapter 1 of such code [chapter 1 of I.R.C.1939] (determined with the amendments made by this Act) for such taxable year shall be paid on January 15, 1952, in lieu of the time prescribed in section 56(a) of such code [section 56(a) of I.R.C.1939]. All payments with respect to any tax for such taxable year imposed by chapter 1 of such code [1939] under the law in effect prior to the enactment of this Act, to the extent that such payments have not been credited or refunded, shall be deemed payments made at the time of the filing of the return required by this section on account of the tax for such taxable year under chapter 1 determined with the amendments made by this Act."

Excess Profits Tax; Extension of Time Limitation. Act Sept. 14, 1951, c. 400, § 2, 65 Stat. 821, provided: "Notwithstanding the six-month limitation contained in section 53(a) (2) of the Internal Revenue Code [this section], extensions of time may be granted under such section, but not beyond November 15, 1951, for the filing by any corporation subject to

the excess profits tax imposed by chapter 1 of such code [this chapter] of the return of the taxes imposed by such chapter for any taxable year ending after June 30, 1950, and before February 1, 1951."

Filing Returns for Taxable Years Ending After June 30, 1950, and Before Dec. 31, 1950. Section 305 of Act Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, 64 Stat. 1220, provided that: "In the case of a corporation subject to the tax imposed by subchapter D of chapter 1 of the Internal Revenue Code [subchapter D of chapter 1 of I.R.C.1939] for a taxable year ending after June 30, 1950, but prior to December 31, 1950, such corporation shall after the date of the enactment of this Act [Jan. 3, 1951] and before March 15, 1951, make a return for such taxable year with respect to the tax imposed by chapter 1 of the Internal Revenue Code [chapter 1 of I.R.C.1939] for such taxable year. The return required by this section for such taxable year shall constitute the return for such taxable year for all purposes of the Internal Revenue Code [1939]; and no return for such taxable year, with respect to any tax imposed by chapter 1 of such code [chapter 1 of I.R.C.1939] filed on or before the date of the enactment of this Act [Jan. 3, 1951], shall be considered for any of such purposes as a return for such year. The taxes imposed by chapter 1 of such code [chapter 1 of I.R.C.1939] (determined with the amendments made by this Act) for such taxable year shall be paid on March 15, 1951, in lieu of the time prescribed in section 56(a) of such code [section 56(a) of I.R.C.1939]. All payments with respect to any tax for such taxable year imposed by chapter 1 of such code under the law in effect prior to the enactment of this Act, to the extent that such payments have not been credited or refunded, shall be deemed payments made at the time of the filing of the return required by this section on account of the tax for such taxable year under chapter 1 [chapter 1 of I.R.C.1939] determined with the amendments made by this Act."

Treaty Obligations. Section 615 of Act Oct. 20, 1951 provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong Service, p. 3053.

§ 54. Records and special returns

(a) **By taxpayer.** Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **To determine liability to tax.** Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter.

(c) **Information at the source**

For requirement of statements and returns by one person to assist in determining the tax liability of another person, see sections 147 to 150.

(d) **Copies of returns.** If any person, required by law or regulations made pursuant to law to file a copy of any income return for any taxable year, fails to file such copy at the time required, there shall be due and assessed against such person \$5 in the case of an individual return or \$10 in the case of a fiduciary, partnership, or corporation return, and the collector with whom the return is filed shall prepare such copy. Such amount shall be collected and paid, without interest, in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Copies of returns filed or prepared pursuant to this subsection shall remain on file for a period of not less than two years from the date they are required to be filed, and may be destroyed at any time thereafter under the direction of the Commissioner.

(e) **Foreign personal holding companies**

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.

(f) **By organizations.** Every organization, except as hereinafter provided, exempt from taxation under section 101 shall file an annual return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. No such annual return need be filed under this subsection by any organization exempt from taxation under the provisions of section 101—

(1) which is a religious organization exempt under section 101(6); or

(2) which is an educational organization exempt under section 101(6), if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(3) which is a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under section 101(6), if such organization is supported, in whole or in part, by funds contribut-

ed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public; or

(4) which is an organization exempt under section 101(6), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in paragraph (1); or

(5) which is an organization exempt solely under section 101(3); or

(6) which is an organization exempt under section 101(15), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such a corporation. 53 Stat. 28, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 117(a), 58 Stat. 36.

Historical Note

1944 Amendment. Subsec. (f) added by Act Feb. 25, 1944. It was enacted without a catchline which has been supplied by the editor.

Effective Date of 1944 Amendment. Amendment adding subsec. (f) made applicable to taxable years beginning after Dec. 31, 1942, by section 117(b) of Act Feb. 25, 1944.

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No

amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 55. Publicity of returns

(a) Public record and inspection

(1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

(2) And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) Inspection by states

(1) **State officers.** The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(2) **State bodies or commissions.** All income returns filed under this chapter (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made

in such manner, and at such times and places, as shall be prescribed by regulations made by the Commissioner with the approval of the Secretary. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the Governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

(c) **Inspection by shareholders.** All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) **Inspection by committees of Congress**

(1) **Committees on ways and means and finance**

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) **Joint committee on internal revenue taxation.** The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) **Inspection in collector's office of list of taxpayers.** The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district.

(f) **Penalties for disclosing information**

(1) **Federal employees and other persons.** It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income,

profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) **State employees.** Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in paragraph 2 of subsection (b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party) any information acquired by him through an inspection permitted him or another under paragraph 2 of subsection (b) shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

(3) **Shareholders.** Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

(4) Cross reference

For penalties for disclosing operations, style of work, or apparatus of any manufacturer or producer, see section 4047.

53 Stat. 29, amended Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 507, 54 Stat. 1008; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 554(d) (1), 55 Stat. 722.

Historical Note

References in Text. Subchapter B of Chapter 2, referred to in subsec. (a) (2), relating to declared value excess-profits tax, was repealed by Act Nov. 8, 1945, c. 453, Title II, § 202, 59 Stat. 574.

Subchapter 2 of Chapter 2, referred to in subsec. (a) (2), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761 and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1941 Amendment. Subsec. (a) (2) amended by Act Sept. 20, 1941, which struck out "subchapters A and B of" preceding "chapter 30".

1940 Amendment. Subsec. (a) (2) amended by Act Oct. 8, 1940, by substi-

tuting "Subchapter A, B, D, and E of Chapter 2" in lieu of "Subchapters A, B, and D of Chapter 2".

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Inspection by Committees. Inspection of income, excess-profits, declared value excess-profits and capital stock tax returns, by the Dies Committee on Un-American Activities, was authorized by Ex.Ord.No.9281, Dec. 9, 1942, 7 F.R. 10355, U.S.Code Cong.Service 1942, p. 1838.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 56. Payment of tax

(a) **Time of payment.** The total amount of tax imposed by this chapter shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year, except that in the case of the tax imposed upon an estate or trust the tax shall be paid on the fifteenth day of April following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the fourth month following the close of the fiscal year.

(b) Installment payments.

(1) Estates of decedents. In the case of the estate of a decedent, the fiduciary may elect to pay the tax in four equal installments.

(2) Corporations. In the case of a corporation—

(A) Taxable years ending before December 31, 1954. The taxpayer may elect with respect to any taxable year ending before December 31, 1954, to pay the tax in four installments, and in such case the amount of the tax paid by each installment shall be determined as follows:

If the taxable year ends—		each of the first two installments shall be the following percentage of the tax:	and each of the last two installments shall be the following percentage of the tax:
on or after—	and before—		
December 31, 1950...	December 31, 1951...	30	20
“ “ 1951...	“ “ 1952...	35	15
“ “ 1952...	“ “ 1953...	40	10
“ “ 1953...	“ “ 1954...	45	5

(B) Taxable years ending on or after December 31, 1954. The taxpayer may elect with respect to any taxable year ending on or after December 31, 1954, to pay the tax in two equal installments.

(3) Dates for installment payments.

(A) Four installments. In any case in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the 15th day of the third month, the third installment on the 15th day of the sixth month, and the fourth installment on the 15th day of the ninth month, after such date.

(B) Two installments. In any case in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, and the second installment shall be paid on the 15th day of the third month after such date.

(4) Requirement for payment. If any installment is not paid on or before the date fixed for its payment, the whole of the tax unpaid shall be paid upon notice and demand from the collector.

(c) Extension of time for payment

(1) General rule. At the request of the taxpayer, the Commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(2) Liquidation of personal holding companies. At the request of the taxpayer, the Commissioner may (under regulations prescribed by the Commissioner with the approval of the Secretary) extend (for a period not to exceed five years from the date prescribed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax by the taxpayer as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money upon the complete liquidation (as defined in section

115(c)) of a corporation. This paragraph shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions referred to in such section), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this paragraph shall be granted only if it is shown to the satisfaction of the Commissioner that the failure to grant it will result in undue hardship to the taxpayer. If an extension is granted the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the extension. If an extension is granted under this paragraph the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension.

(d) **Voluntary advance payment.** A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(e) **Advance payment in case of jeopardy**

For advance payment in case of jeopardy, see section 146.

(f) **Tax withheld at source**

For requirement of withholding tax at source, see sections 143 and 144.

(g) **Fractional parts of cent.** In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(h) **Receipts.** Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt therefor.

(i) **Payment of tax if not computed by taxpayer.** Where under section 51(f) a taxpayer who is an individual is permitted to file return without showing the tax thereon, and the tax is to be computed by the collector, the amount determined by the collector as payable shall be paid within thirty days after the mailing by the collector to the taxpayer of a notice stating such amount and making demand therefor. 53 Stat. 31, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 172(f) (1), 56 Stat. 893; June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(d), 57 Stat. 141; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, §§ 6(b) (2), 12, 58 Stat. 234, 241; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 205(a), (b) (2), 64 Stat. 929, 930.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, § 205(b) (2), which added "except that in * * * the fiscal year".

Subsec. (b) amended by Act Sept. 23, 1950, § 205(a), to change the method by which a corporation pays its income taxes.

1944 Amendment. Subsec. (f) amended by Act May 29, 1944, which struck out "144 and Part II of Subchapter D", and inserted in lieu "and 144".

Subsec. (i) added by Act May 29, 1944.

1943 Amendment. Subsec. (b) amended by Act June 9, 1943, which inserted exception clause at beginning of first sentence.

1942 Amendment. Subsec. (f) amended by Act Oct. 21, 1942.

Effective Date of 1950 Amendments. Section 205(b) (3) of Act Sept. 23, 1950, provided the amendment of subsec. (a) by said Act Sept. 23, 1950, should be applicable only with respect to taxable years ending after Sept. 23, 1950.

Section 205(a) of Act Sept. 23, 1950, provided in part that the amendment of subsec. (b) by said Act Sept. 23, 1950, should be effective with respect to taxable years ending on or after Dec. 31, 1950.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943, provided that the amendment of this section was

made effective with respect to taxable years beginning after Dec. 31, 1942.

Effective Date of 1942 Amendment. Section 172(g) of Act Oct. 21, 1942, provided that the amendment of this section was made effective Jan. 1, 1943, applicable to all wages (as defined in Part II of Subchapter D) paid on or after such date.

Treaty Obligations: Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its

application would be contrary to any treaty obligation of the United States"

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S Code Cong.Service, p. 3053. See, also, Act May 29, 1944, 1944 U.S.Code Cong. Service, p. 1056.

§ 57. Examination of return and determination of tax

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. 53 Stat. 32.

§ 58. Declaration of estimated tax by individuals

(a) **Requirement of declaration.** Every individual (other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621 (a), withholding under Subchapter D of Chapter 9 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if—

(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of \$4,500 plus \$600 with respect to each exemption provided in section 25(b); or

(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed \$100 for the taxable year and his gross income to be \$600 or more.

(b) **Contents of declaration.** In the declaration required under subsection (a) the individual shall state—

(1) the amount which he estimates as the amount of tax under this chapter for the taxable year, without regard to any credits under sections 32 and 35 for taxes withheld at source and without regard to the tax imposed by subchapter E on self-employment income;

(2) the amount which he estimates as the credits for the taxable year under sections 32 and 35; and

(3) the excess of the amount estimated under paragraph (1) over the amount estimated under paragraph (2), which excess for the purposes of this chapter shall be considered the estimated tax for the taxable year.

The declaration shall also contain such other information for the purposes of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall contain or be verified by a written statement that it is made under the penalties of perjury.

(c) **Joint declaration by husband and wife.** In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or wife is a nonresident alien. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(d) Time and place for filing

(1) **In general.** The declaration required under subsection (a) shall be filed on or before March 15 of the taxable year, except that if the requirements of section 58(a) are first met

(A) after March 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(B) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(C) after September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(2) Amendment of declaration. An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioner with the approval of the Secretary. If so made, such amendments may be filed on or before the fifteenth day of the last month of any quarter of the taxable year subsequent to that in which the declaration was filed and in which no previous amendment has been filed, except that in the case of an amendment filed after September 15 of the taxable year, it may be filed on or before January 15 of the succeeding taxable year. Declarations and amendments thereof shall be filed with the collector specified in section 53(b) (1).

(3) Return as declaration or amendment. If on or before January 15 of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Commissioner with the approval of the Secretary—

(A) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this chapter, be considered as such declaration; and

(B) If the tax shown on the return (reduced by the credits under sections 32 and 35) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall, for the purposes of this chapter, be considered as the amendment of the declaration permitted by paragraph (2) to be filed on or before such January 15.

(e) Extension of time. The Commissioner may grant a reasonable extension of the time for filing declarations and paying the estimated tax, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(f) Persons under disability. If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(g) Signature presumed correct. The fact that an individual's name is signed to a filed declaration shall be prima facie evidence for all purposes that the declaration was actually signed by him.

(h) Publicity of declaration. For the purposes of section 55 (relating to publicity of returns), a declaration of estimated tax shall be held and considered a return under this chapter. June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(a), 57 Stat. 141, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 13(a), 58 Stat. 242; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (4), 59 Stat. 559; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(a), 62 Stat. 113; Aug. 28, 1950, c. 809, Title II, § 208(d) (4), 64 Stat. 544; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(g), 64 Stat. 945.

Historical Note

1950 Amendments. Subsec. (a) amended by Act Sept. 23, 1950, to require alien individuals who are residents of Puerto Rico during the entire taxable year to make a declaration of their estimated taxes.

Subsec. (b) (1) amended by Act Aug. 28, 1950, which inserted "and without regard * * * self-employment income" immediately following "withheld at source".

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948, which makes technical amendments made necessary by the additional credits provided by section 25(b) of I.R.C.1939.

1945 Amendment. Subsec. (a) (1) amended by Act Nov. 8, 1945, § 102(b) (4), which struck out "surtax"

1944 Amendment. Section amended generally by Act May 29, 1944, which among other changes raised requirement of filing a declaration to \$5000 of anticipated income plus \$500 in addition for every surtax exemption, except his own exemption, to which he is entitled, revised time of filing of the original declaration entirely, and allowed a final return filed on or before Jan. 15 to operate as a declaration or amendment to a declaration.

1943 Amendment. Act June 9, 1943, omitted Act Feb. 10, 1939, c. 2, § 58, 53 Stat. 32, which related to cross references to other sections of I.R.C.1939, and inserted, in lieu thereof, text relating to declaration of estimated tax by individuals.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C. 1939.

Effective Date of 1948 Amendment. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b), (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Effective Date of 1945 Amendment. Section 102(c) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Section 13(c) of Act May 29, 1944, provided: "The amendment made by subsection (a), insofar as it relates to section 58(a) of the Internal Revenue Code

[1939], shall be applicable only with respect to taxable years beginning after December 31, 1944."

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943, provided that the amendment of this section was made effective with respect to taxable years beginning after Dec. 31, 1942.

Special Rule for 1944. Section 13(d) of Act May 29, 1944, provided: "The provisions of sections 58 and 59 of such Code, as amended by this Act [Act May 29, 1944, 7 p. m., E.W.T., c. 210, Part I, § 13(a), 53 Stat. 242], shall be subject to the following modifications with respect to declaration and payment of estimated tax for the calendar year 1944:

"(1) **Time for filing declaration.** If the requirements of section 58(a) of such Code, without regard to its amendment by this Act, are first met before April 1, 1944, the declaration shall be filed on or before April 15, 1944, and if such requirements are first met after March 31, 1944, and before June 2, 1944, the declaration shall be filed on or before June 15, 1944

"(2) **Payment of estimated tax.** If the declaration is filed on or before April 15, 1944, then (even though such declaration under existing law or under paragraph (1) of this subsection was not required to be filed before June 15, 1944) the estimated tax shall be paid in four equal installments and at the times provided in section 59(a) (1) of such Code, as amended by this Act. If the declaration is filed after April 15, 1944, and not after June 15, 1944 (and is not required by paragraph (1) to be filed on or before April 15), the estimated tax shall be paid in three equal installments and at the times provided in section 59(a) (2) of such Code, as amended by this Act. The rule provided in section 59(a) (5) of such Code, as amended by this Act, shall apply with respect to declarations filed after the time prescribed in paragraph (1) of this subsection."

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title" 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053. See, also, Acts Aug. 28, 1950, 1950 U.S. Code Cong. Service, p. 3287; Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 1163; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 59. Payment of estimated tax

(a) **In general.** The estimated tax shall be paid as follows:

(1) If the declaration is filed on or before March 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after March 15 and not after June 15 of the taxable year, and is not required by section 58(d) to be filed on or before March 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by section 58(d) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 58(d) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in section 58(d) (including cases in which an extension of time for filing the declaration has been granted under section 58(e)), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 58(d), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) **Amendments of declaration.** If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) **Installments paid in advance.** At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(d) **Payment as part of tax for taxable year.** Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year. Assessment in respect of the estimated tax shall be limited to the amount paid. June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(a), 57 Stat. 143, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 13(a), 58 Stat. 243.

Historical Note

1944 Amendment. Section amended generally by Act May 29, 1944, which among other changes added subsecs (b) and (c) and incorporated former subsec. (b) in subsec. (d).

1943 Amendment. Act June 9, 1943, omitted Act Feb. 10, 1939, c. 2, § 59, 53 Stat. 32, which related to cross references to other sections and inserted, in lieu thereof, text relating to payment of estimated tax.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943, provided that the amendment of this section was made effective with respect to taxable years beginning after Dec. 31, 1942.

Special Rule for 1944. See note set out under section 58 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 20, 1944, see 1944 U.S.Code Cong Service, p. 1056.

§ 60. Special rules for application of sections 58 and 59

(a) **Farmers.** In the case of an individual whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, in lieu of the time prescribed in section 58(d), the declaration for the taxable year may be made at any time on or before January 15 of the succeeding taxable year; and if such an individual files a return on or before January 31 of the succeeding taxable year, and pays in full the amount computed on the return as payable, such return shall have the same effect as that prescribed in section 58(d) (3) in the case of a return filed on or before January 15.

(b) **Application to short taxable years.** The application of sections 58, 59, and 294(d), and of subsection (a) of this section, to taxable years of less than twelve months shall be as prescribed in regulations prescribed by the Commissioner with the approval of the Secretary.

(c) **Fiscal years.** In the application of sections 58 and 59, and subsection (a) of this section, to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified therein, the months which correspond thereto. June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(a), 57 Stat. 143, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 118(b), 58 Stat. 38; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 13(a), 58 Stat. 244; Oct. 25, 1949, c. 720, § 1, 63 Stat. 891.

Historical Note

1949 Amendment. Subsec. (a) amended by Act Oct. 25, 1949, to provide that if a farmer on a calendar-year basis files his income-tax return on or before Jan. 31 following the close of the year, and pays in full the amount computed on the return as payable, such return and payment shall also be considered as the declaration and payment of estimated tax now required to be returned on or before Jan. 15.

1944 Amendment. Section amended generally by Act May 29, 1944, which among other changes changed the definition of farmers so that the receipt of two-thirds of the income rather than 80 per cent from agricultural sources will qualify a taxpayer as a farmer.

Subsec. (b) amended by Act Feb. 25, 1944, which struck out "294(a) (3), (4), and (5)" and inserted in lieu thereof "294(d)".

1943 Amendment. Act June 9, 1943, omitted Act Feb 10, 1939, c. 2, § 60, 53 Stat. 32, which related to cross references to other sections of I.R.C.1939 and inserted, in lieu thereof, text relating to spe-

cial rules for application of sections 58 and 59.

Effective Date of 1944 Amendment. Section 2 of Act May 20, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Section 118(c) of Act Feb. 25, 1944, provided that the amendment of subsec. (b) was made applicable to taxable years beginning after Dec. 31, 1942.

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943, provided that the amendment of this section was made effective with respect to taxable years beginning after Dec. 31, 1942.

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong.Service, p. 1058.

PART VI—MISCELLANEOUS PROVISIONS

§ 61. Laws made applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 32.

§ 62. Rules and regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 32.

§ 63. Publication of statistics

The Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. 53 Stat. 32.

§ 64. Definitions

For definitions of a general character, see section 3797. 53 Stat. 32.

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

[Supplementary to Subchapter B, Part I]

§ 101. Exemptions from tax on corporations

Except as provided in paragraph (12) (B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

- (1) Labor, agricultural, or horticultural organizations;
- (2) Repealed. Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 313 (a), 65 Stat. 490.
- (3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) Credit unions without capital stock organized and operated for mutual purposes and without profit; and corporations or associations without capital stock organized prior to September 1, 1951, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

- (A) domestic building and loan associations,
- (B) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or
- (C) mutual savings banks not having capital stock represented by shares;

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814;

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(11) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) does not exceed \$75,000;

(12) (A) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of

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which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(B) An organization exempt from taxation under the provisions of subparagraph (A) shall be subject to the taxes imposed by sections 13 and 15, or section 117 (c) (1), except that in computing the net income of such an organization there shall be allowed as deductions from gross income (in addition to other deductions allowable under section 23)—

(i) amounts paid as dividends during the taxable year upon its capital stock, and

(ii) amounts allocated during the taxable year to patrons with respect to its income not derived from patronage (whether or not such income was derived during such taxable year) whether paid in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the dollar amount allocated to him. Allocations made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to income derived before the close of such year.

Patronage dividends, refunds, and rebates to patrons with respect to their patronage in the same or preceding years (whether paid in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the dollar amount of such dividend, refund, or rebate) shall be taken into account in computing net income in the same manner as in the case of a cooperative organization not exempt under subparagraph (A). Such dividends, refunds, and rebates made after the close of the taxable year and on or before the 15th day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the dividends, refunds, or rebates, are attributable to patronage occurring before the close of such year.

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(16) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses;

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(19) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For the purposes of this paragraph the term "trade or business" shall not include the rental by an organization of its real property (including personal property leased with the real property).

Notwithstanding paragraph (12) (B) and supplement U, an organization described in this section (other than in the preceding paragraph) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

53 Stat. 33, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 217, 53 Stat. 876; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 137(a), 165(a), 56 Stat. 836, 872; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. I, § 301(b), (c), Pt. III, § 332(c), 64 Stat. 950, 953, 959; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 313(a), (b), 314(a), (b), 65 Stat. 490.

Historical Note

1951 Amendment. Opening paragraph amended by Act Oct. 20, 1951, § 314(b), which inserted "in paragraph (12) (B) and".

Subsec. (2) repealed by Act Oct. 20, 1951, § 313(a). Subject matter is now covered by subsec. (4) (C).

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Subsec. (4) amended by Act Oct. 20, 1951, § 313(b), to exclude from exemption provisions building and loan associations and cooperative banks.

Subsec. (12) amended by Act Oct. 20, 1951, § 314(a), to insert "(A)" immediately following "(12)", and to add paragraph "(B)".

Last sentence amended by Act Oct. 20, 1951, § 314(b), which inserted "paragraph (12) (B) and".

1950 Amendment. Act Sept. 23, 1950, amended section by substituting "Except as provided in supplement U, the following organizations shall be exempt" in lieu of "The following organizations shall be exempt", by substituting "legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814" in lieu of "legislation;" in paragraph (6), and by adding last two paragraphs.

1942 Amendment. Subsecs. (11) and (16) amended by Act Oct. 21, 1942.

Subsec. (11), prior to the 1942 amendment, applicable to taxable years beginning after Dec. 31, 1941, read as follows: "Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses."

In subsec. (16), the amendment of 1942, effective as if part of the Internal Revenue Code on date of its enactment Feb. 10, 1939, added the words "and amounts contributed to the association by the employer of the members".

1939 Amendment. Subsec. (19) added by Act June 29, 1939.

Effective Date of 1951 Amendment. Amendment of first and last sentences and subsec. (12) made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 314(d) of Act Oct. 20, 1951. Repeal of subsec. (2) and amendment of subsec. (4) made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 313(j) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as applicable only with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of subsec. (11) was made applicable to taxable years beginning after Dec. 31, 1941.

Amendment of subsec. (16) by Act Oct. 21, 1942, § 137(a), was made effective by section 137(b) thereof as follows:

"(b) For the purposes of the Internal Revenue Code [1939] and the Revenue Acts of 1928, 1932, 1934, 1938, and 1938, the amendments made to the Internal Revenue Code (to subsec. (16)) and those Acts by subsection (a) of this section shall be effective as if they were a part of the Internal Revenue Code and such revenue Acts on the respective dates of their enactment."

Effective Date of 1939 Amendment. Amendment adding subsec. (19) made applicable to taxable years beginning after Dec. 31, 1938 by section 217(b) of Act June 29, 1939.

Exemption of Certain Organizations for Past Years. See section 302 of Act Sept. 23, 1950, as amended by section 601 of Act Oct. 20, 1951, set out in volumes "Title 26—Internal Revenue Acts".

Employment Taxes. Section 137(c) of Act Oct. 21, 1942 provided that the amendment to subsec. 16 shall not apply to employment taxes imposed by sections 1400-1432 and 1600-1611 of I.R.C.1939, or the corresponding provisions of a prior law.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong Service, p. 1781. See, also, Act Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053.

§ 102. Surtax on corporations improperly accumulating surplus

(a) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year (in addition to other taxes imposed by this chapter) upon the net income of every corporation (other than a personal holding company as defined in section 501 or a foreign personal holding company as defined in Supplement P) if such corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders or the shareholders of any other corporation, through the medium of permitting earnings or profits

to accumulate instead of being divided or distributed, a surtax equal to the sum of the following:

27½ per centum of the amount of the undistributed section 102 net income not in excess of \$100,000, plus

38½ per centum of the undistributed section 102 net income in excess of \$100,000.

(b) **Prima facie evidence.** The fact that any corporation is a mere holding or investment company shall be prima facie evidence of a purpose to avoid surtax upon shareholders.

(c) **Evidence determinative of purpose.** The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid surtax upon shareholders unless the corporation by the clear preponderance of the evidence shall prove to the contrary.

(d) **Definitions.** As used in this chapter—

(1) **Section 102 net income.** The term "section 102 net income" means the net income, computed without the benefit of the capital loss carry-over provided in section 117(e) from a taxable year which begins after December 31, 1940, and computed without the net operating loss deduction provided in section 23(s), minus the sum of—

(A) **Taxes.** Federal income, war-profits, and excess-profits taxes (other than the tax imposed by Subchapter E of Chapter 2 for a taxable year beginning after December 31, 1940) paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

(B) **Disallowed charitable, etc., contributions.** Contributions or gifts payment of which is made within the taxable year, not otherwise allowed as a deduction, to or for the use of donees described in section 23 (o), for the purposes therein specified. For the purposes of the preceding sentence, payment of any contribution or gift shall be considered as made within the taxable year if and only if it is considered for the purposes of section 23 (q) as made within such year.

(C) **Disallowed losses.** Losses from sales or exchanges of capital assets which are disallowed as a deduction by section 117(d).

(D) **Long-term capital gains.** The excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year, minus the taxes imposed by this chapter attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between (i) the taxes imposed by this chapter (except the tax imposed by this section) for such year and (ii) such taxes computed for such year without including such excess in net income.

(2) **Undistributed section 102 net income.** The term "undistributed section 102 net income" means the section 102 net income minus the basic surtax credit provided in section 27(b), but the computation of such credit under section 27(b) (1) shall be made without its reduction by the amount of the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations.

(e) **Tax on personal holding companies.**

For surtax on personal holding companies, see section 500.

(f) **Income not placed on annual basis.** Section 47(c) shall not apply in the computation of the tax imposed by this section. 53 Stat. 35, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(f), 53 Stat. 868, Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 103(d), 202(b), 55 Stat. 693, 700; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 105(e) (2), 135(b) (1), 138, 56 Stat. 807, 835, 836; Nov. 8,

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1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (5), 59 Stat. 570; Oct. 25, 1949, c. 720, § 3(b), 63 Stat. 892; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 315(a), 65 Stat. 493.

Historical Note

References in Text. Subchapter E of Chapter 2, referred to in subsec. (d) (1) (A), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 224(b), 228(b), 229 (a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761 and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1951 Amendment. Subsec. (d) (1) amended by Act Oct. 20, 1951, § 315(a), which added subpar. (D).

1949 Amendment. Subsec. (d) (1) (B) amended by Act Oct. 25, 1949, which added last sentence to integrate provisions of section relating to charitable contributions with new provisions of subsec. (g) of section 23 of I.R.C.1939.

1945 Amendment. Subsec. (d) (1) amended by Act Nov. 8, 1945, which struck out subparagraph (D) thereof.

1942 Amendment. Subsec. (d) amended and subsecs. (d) (D) and (f) added by Act Oct. 21, 1942. Prior to such amendment, subsec. (d) (1) read as follows: "Section 102 net income. The term 'section 102 net income' means the net income, computed without the net operating loss deduction provided in section 23(s), minus the sum of —."

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, § 103(d), which increased rates specified from "25 per centum" and "35 per centum" to "27½ per centum" and "38½ per centum" respectively.

Subsec. (d) (1) (A), amended by Act Sept. 20, 1941, § 202(b), which added the words "(other than the tax imposed by Subchapter E of Chapter 2 for a taxable year beginning after December 31, 1940)."

1939 Amendment. Subsec. (d) (1) amended by Act June 29, 1939 Prior to the amendment, such paragraph read as follows: "Section 102 net income. —The term 'section 102 net income' means the net income minus the sum of —".

Effective Date of 1951 Amendment. Amendment of subsec. (d) (1) by addition of subparagraph (D) made applicable only with respect to taxable years beginning after Dec 31, 1950, by section 315(b) of Act Oct. 20, 1951.

Effective Date of 1949 Amendment. Section 3(c) of Act Oct. 25, 1949, provided that:

"The amendments made by this section [to sections 23(g), 102(d) (1) (B), 336(a) (2), 505(a) (2)] shall be applicable with respect to taxable years beginning after December 31, 1942. If the

election provided for in such amendments is made for any taxable year beginning before January 1, 1949—

"(1) the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within one year after the date of the enactment of this Act [Oct. 25, 1949]; but

"(2) such election shall not be allowed unless the taxpayer, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, consents in writing to the assessment (within such period as may be agreed upon) of any deficiency, to the extent resulting from such election, for any other taxable year of the taxpayer, even though on the date of the filing of such consent such assessment is otherwise prevented by the operation of any law or rule of law."

Effective Date of 1945 Amendment. Section 122(g) of Act Nov. 8, 1945 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made, applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Sections 118 and 205 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1940.

Fiscal Year Taxpayers. For taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Act Nov. 8, 1945, 1945 U.S.Code Cong. Service, p. 814.

§ 103. Rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 11, 12, 13, 14, 201(a), 204(a), 207, 211(a), 231(a), 362, and 400 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by sections 11, 12, 13, 14, 201(a), 204(a), 207, 211(a), 231(a), 362 and 400, as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 per centum of the net income of the taxpayer. Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made. 53 Stat. 36, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 163(b) (1), 172(c), 56 Stat. 870, 892; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 6(b) (3), 58 Stat. 234.

Historical Note

1944 Amendment. Act May 29, 1944, amended section by striking "and 450" wherever appearing and inserting in lieu thereof "and 400".

1942 Amendment. Act Oct. 21, 1942, corrected references to other sections.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Amendment by section 163(b) (1) of Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1942, by section 101 thereof, and amendment by section 172(c) of said Act Oct.

21, 1942, was made effective Jan. 1, 1943, by section 172(g) thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S. Code Cong. Service, p. 1056.

§ 104. Banks and trust companies—(a) Definition

As used in this section the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 11 (k) of the Federal Reserve Act, 38 Stat. 262 (U.S.C., Title 12, § 248k), as amended, and which is subject by law to supervision and examination by State, Territorial or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(b) Rate of tax. Banks shall be subject to tax under section 13 or section 14(b), and under section 15. 53 Stat. 36, amended June 29,

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1939, 10 p. m., E. S. T., c. 247, Title II, § 202, 53 Stat. 865; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 104(c), 55 Stat. 694; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 520, Title III, § 313(h), 65 Stat. 491.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 313(h), to add at end thereof "Such term * * * loan association".

1941 Amendment. Subsec. (b) amended by Act Sept. 20, 1941.

1939 Amendment. Subsec. (b) amended by Act June 29, 1939. Prior to said amendment subsec. (b) read as follows: "Rate of tax, Banks shall be taxable under section 14(d)."

Effective Date of 1951 Amendment. Amendment of subsec. (a) made applicable only with respect to taxable years beginning after Dec. 31, 1951 by section 313(j) of Act Oct. 20, 1951.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of subsec. (b) was made applicable to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 105. Sale of oil or gas properties

In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by section 12 attributable to such sale shall not exceed 30 per centum of the selling price of such property or interest. 53 Stat. 36.

§ 106. Claims against United States involving acquisition of property

In the case of amounts (other than interest) received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than fifteen years, the portion of the tax imposed by section 12 attributable to such receipt shall not exceed 30 per centum of the amount (other than interest) so received. 53 Stat. 36.

§ 107. Compensation for services rendered for a period of thirty-six months or more and back pay

(a) **Personal services.** If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(b) **Patent, copyright, etc.** For the purposes of this subsection, the term "artistic work or invention", in the case of an individual, means a literary, musical, or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical, or artistic composition of such individual, the work on which by such individual covered a period of thirty-six calendar months or more from the begin-

ning to the completion of such composition or invention. If, in the taxable year, the gross income of any individual from a particular artistic work or invention by him is not less than 80 per centum of the gross income in respect of such artistic work or invention in the taxable year plus the gross income therefrom in previous taxable years and the twelve months immediately succeeding the close of the taxable year, the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than 6 months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months.

(c) **Fractional parts of a month.** For the purposes of this section a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(d) **Back pay.**

(1) **In general.** If the amount of the back pay received or accrued by an individual during the taxable year exceeds 15 per centum of the gross income of the individual for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the taxable year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable, as determined under regulations prescribed by the Commissioner with the approval of the Secretary.

(2) **Definition of back pay.** For the purposes of this subsection, "back pay" means (A) remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the taxable year by an employee for services performed prior to the taxable year for his employer and which would have been paid prior to the taxable year except for the intervention of one of the following events; (i) bankruptcy or receivership of the employer; (ii) dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings; (iii) if the employer is the United States, a State, a Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any of the foregoing, lack of funds appropriated to pay such remuneration; or (iv) any other event determined to be similar in nature under regulations prescribed by the Commissioner with the approval of the Secretary; and (B) wages or salaries which are received or accrued during the taxable year by an employee for services performed prior to the taxable year for his employer and which constitute retroactive wage or salary increases ordered, recommended, or approved by any Federal or State agency, and made retroactive to any period prior to the taxable year; and (C) payments which are received or accrued during the taxable year as the result of an alleged violation by an employer of any State or Federal law relating to labor standards or practices, and which are determined under regulations prescribed by the Commissioner with the approval of the Secretary to be attributable to a prior taxable year. Amounts not includible in gross income under this chapter shall not constitute "back pay".

(e) **Tax on self-employment income.** This section shall be applied without regard to, and shall not affect, the tax imposed by subchapter E, relating to tax on self-employment income. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 220(a), 53 Stat. 878, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 139(a), 56 Stat. 837; Feb. 25, 1944,

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12:49 p. m., E. W. T., c. 63, Title I, § 119(a, b), 58 Stat. 39; Aug. 28, 1950, c. 809, Title II, § 208(d) (5), 64 Stat. 544.

Historical Note

1950 Amendment. Subsec. (e) added by Act Aug. 28, 1950.

1944 Amendment. Catchline amended by the addition of "and back pay" and subsec. (d) added by Act Feb. 25, 1944.

1942 Amendment. Act Oct. 21, 1942, among other changes, divided section into subsecs., inserting new matter in subsec. (b).

Effective Date of 1944 Amendment. Amendments made by Act Feb. 25, 1944, were made applicable to taxable years beginning after Dec. 31, 1940, by section 119 (c) thereof.

Effective Date of 1942 Amendment. Section 139(b) of Act Oct. 21, 1942, provided as follows: "(b) The amendment made by subsection (a) [to section 107] shall be applicable to taxable years beginning after December 31, 1940, but with respect to a taxable year beginning after December 31, 1940, and not beginning after December 31, 1941, the period specified in such subsection shall be sixty months in lieu of thirty-six months, and the percentage specified in such subsec-

tion shall be 75 per centum in lieu of 80 per centum."

Effective Date of 1939 Amendment. Section was made applicable to taxable years beginning after Dec. 31, 1938, by section 220(b) of Act June 29, 1939.

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 610, Title I, § 109, 58 Stat. 808

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287.

§ 108. Fiscal year taxpayers

(a) **Taxable years beginning in 1941 and ending after June 30, 1942.** In the case of a taxable year beginning in 1941 and ending after June 30, 1942, the tax imposed by sections 11, 12, 13, 14, and 15 shall be—

(1) **Corporations.** In the case of a corporation an amount equal to the sum of—

(A) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1941, were applicable to such taxable year, which the number of days in such taxable year before July 1, 1942, bears to the total number of days in such taxable year, plus

(B) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1941, were applicable to such taxable year, but as if the amendments made by sections 105(a), (b) (other than those relating to dividends on the preferred stock of public utilities), (c), (d), and (e) (1), 202, and 206 of the Revenue Act of 1942 were applicable to such taxable year, which the number of days in such taxable year after June 30, 1942, bears to the total number of days in such taxable year.

(2) **Taxpayers other than corporations.** In the case of a taxpayer other than a corporation, an amount equal to the sum of—

(A) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1941, were applicable to such taxable year, which the number of days in such taxable year before July 1, 1942, bears to the total number of days in such taxable year, plus

(B) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1941, were applicable to such taxable year, but as if the amendments made by sections 102 and 103 of the Revenue Act of 1942 were applicable to such taxable year, which the number of days in such taxable year after June 30, 1942, bears to the total number of days in such taxable year.

(b) **Taxable years beginning in 1943 and ending in 1944.** In the case of a taxable year beginning in 1943 and ending in 1944, the tax imposed by sections 11, 12, 13, 14, 15, and 450 shall be—

(1) **Corporations.** In the case of a corporation, an amount equal to the sum of—

(A) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1943, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1944, bears to the total number of days in such taxable year, plus

(B) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1944, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1943, bears to the total number of days in such taxable year.

(2) **Taxpayers other than corporations.** In the case of a taxpayer other than a corporation, an amount equal to the sum of—

(A) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1943, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1944, bears to the total number of days in such taxable year, plus

(B) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1944, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1943, bears to the total number of days in such taxable year.

(c) **Taxable years beginning in 1945 and ending in 1946.** In the case of a taxable year beginning in 1945 and ending in 1946, the tax imposed by sections 11, 12, 13, 14, 15, and 400 shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1945, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year, plus

(2) that portion of a tentative tax, computed as if the law applicable to years beginning on January 1, 1946, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1945, bears to the total number of days in such taxable year.

(d) **Taxable years of individuals beginning in 1947 and ending in 1948.** In the case of a taxable year of an individual beginning in 1947 and ending in 1948, the tax imposed by sections 11, 12, and 400 shall be an amount equal to the sum of—

(1) that portion of a tax, computed as if the law applicable to taxable years beginning on January 1, 1947, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1948, bears to the total number of days in such taxable year, plus

(2) that portion of a tax, computed as if the law applicable to taxable years beginning on January 1, 1948, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1947, bears to the total number of days in such taxable year.

(e) **Certain taxable years of individuals beginning before October 1, 1950, and ending after September 30, 1950.** In the case of a taxable year (other than one beginning on January 1, 1950, and ending on December 31, 1950) of a taxpayer other than a corporation beginning before October 1, 1950, and ending after September 30, 1950, the tax imposed by sections 11, 12, and 400 shall be an amount equal to the sum of—

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(1) that portion of a tentative tax, computed under the provisions of sections 11 (b), 12 (b) (2), 12 (c) (2), and 12 (d), or Table III of section 400, applicable to such taxable year, which the number of calendar months in such taxable year prior to October 1, 1950, bears to the total number of calendar months in such taxable year, plus

(2) that portion of a tentative tax, computed under the provisions of sections 11 (a), 12 (b) (1), 12 (d), and 12 (f), or Table I of section 400, applicable to years beginning on October 1, 1950, as if such provisions were applicable to such taxable year, which the number of calendar months in such taxable year after September 30, 1950, bears to the total number of calendar months in such taxable year.

For the purposes of this subsection, a calendar month only part of which falls within the taxable year (A) shall be disregarded if less than 15 days of such month are included in such taxable year, and (B) shall be included as a calendar month within the taxable year if more than 14 days of such month fall within the taxable year.

(f) **Certain taxable years of corporations beginning before July 1, 1950, and ending after June 30, 1950.** In the case of a taxable year (other than one beginning on January 1, 1950, and ending on December 31, 1950) of a corporation beginning before July 1, 1950, and ending after June 30, 1950, the tax imposed by sections 13, 14, and 15 shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed under the provisions of sections 13 (b) (3), 14, and 15 (b) (3), applicable to such taxable year, which the number of days in such taxable year prior to July 1, 1950, bears to the total number of days in such taxable year, plus

(2) that portion of a tentative tax consisting of—

(A) a tentative normal tax of 25 per centum of the normal-tax net income, plus

(B) a tentative surtax of 20 per centum of the surtax net income in excess of \$25,000, which the number of days in such taxable year after June 30, 1950, and before April 1, 1951, bears to the total number of days in such taxable year, plus (if the taxable year ends after March 31, 1951)

(3) that portion of a tentative tax consisting of—

(A) a tentative normal tax of 30 per centum of the normal-tax net income, plus

(B) a tentative surtax of 20 per centum of the surtax net income in excess of \$25,000, which the number of days in such taxable year after March 31, 1951, bears to the total number of days in such taxable year.

In computing for the purposes of paragraph (2) the normal-tax net income and the corporation surtax net income, the credits provided in section 26 applicable to taxable years beginning on July 1, 1950, shall be allowed in the manner and to the extent provided in sections 13 and 15 applicable to years beginning on such date, except that such credits shall be applied without regard to the amendments made to section 26 by title II of the Excess Profits Tax Act of 1950. In computing for the purposes of paragraph (3) the normal-tax net income and the corporation surtax net income, the credits provided in section 26 applicable to taxable years beginning on April 1, 1951, shall be allowed in the manner and to the extent provided in sections 13 and 15 applicable to years beginning on such date.

(g) **Certain taxable years of corporations beginning after June 30, 1950, and before April 1, 1951.** In the case of a taxable year (other than one beginning on January 1, 1951, and ending on December 31, 1951) of a corporation beginning after June 30, 1950, and before April

1, 1951, and ending after March 31, 1951, the tax imposed by sections 13 and 15 shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed under the provisions of sections 13 and 15 applicable to such taxable year, which the number of days in such taxable year prior to April 1, 1951, bears to the total number of days in such taxable year, plus

(2) that portion of a tentative tax, computed under the provisions of sections 13 and 15 applicable to years beginning on April 1, 1951, as if such provisions were applicable to such taxable year, which the number of days in such taxable year after March 31, 1951, bears to the total number of days in such taxable year.

(h) **Certain taxable years of individuals beginning before November 1, 1951, and ending after October 31, 1951.** In the case of a taxable year (other than one beginning on January 1, 1951, and ending on December 31, 1951) of a taxpayer, other than a corporation, beginning before November 1, 1951, and ending after October 31, 1951, the tax imposed by sections 11 and 12, section 400, or section 421 (a) (2), shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed under the provisions of sections 11 and 12, section 400, or section 421 (a) (2), applicable to such year, which the number of calendar months in such taxable year prior to November 1, 1951, bears to the total number of calendar months in such taxable year, plus

(2) that portion of a tentative tax, computed under the provisions of sections 11 and 12, section 400, or section 421 (a) (2), applicable to years beginning on November 1, 1951, as if such provisions (other than the provisions relating to head of household) were applicable to such taxable year, which the number of calendar months in such taxable year after October 31, 1951, bears to the total number of calendar months in such taxable year.

This subsection shall not apply in the case of a trust described in section 421(b) (2) if the taxable year of such trust began before January 1, 1951.

(i) **Definition of calendar month.** For the purposes of this section, a calendar month only part of which falls within a taxable year (1) shall be disregarded if less than 15 days of such month are included in such taxable year, and (2) shall be included as a calendar month within the taxable year if more than 14 days of such month fall within the taxable year.

(j) **Taxable years of individuals beginning in 1953 and ending in 1954.** In the case of a taxable year of a taxpayer, other than a corporation, beginning before January 1, 1954, and ending after December 31, 1953, the tax imposed by sections 11 and 12, section 400, or section 421 (a) (2), shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed under the provisions of sections 11 and 12, section 400, or section 421 (a) (2), applicable to years beginning on January 1, 1953, which the number of calendar months in such taxable year prior to January 1, 1954, bears to the total number of calendar months in such taxable year, plus

(2) that portion of a tentative tax, computed under the provisions of sections 11 and 12, section 400, or section 421 (a) (2), applicable to years beginning on January 1, 1954, as if such provisions were applicable to such taxable year, which the number of calendar months in such taxable year after December 31, 1953, bears to the total number of calendar months in such taxable year.

(k) **Taxable years of corporations beginning before April 1, 1954, and ending after March 31, 1954.** In the case of a taxable year of a corporation beginning before April 1, 1954, and ending after March 31, 1954,

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the tax imposed by sections 13 and 15, or section 421(a) (1), shall be an amount equal to the sum of—

(1) that portion of a tentative tax, computed under the provisions of sections 13 and 15, or section 421(a) (1), applicable to years beginning on January 1, 1953, which the number of days in such taxable year prior to April 1, 1954, bears to the total number of days in such taxable year, plus

(2) that portion of a tentative tax, computed under the provisions of sections 13 and 15, or section 421(a) (1), applicable to years beginning on April 1, 1954, as if such provisions were applicable to such taxable year, which the number of days in such taxable year after March 31, 1954, bears to the total number of days in such taxable year.

(l) **Special classes of taxpayers.** This section shall not apply to an insurance company subject to Supplement G or an investment company subject to Supplement Q. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 140(a), 56 Stat. 837, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 108(a), 58 Stat. 32; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 131(a), 59 Stat. 570; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title VI, § 601, 62 Stat. 136; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. III, § 131(a), 64 Stat. 920; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 203, 64 Stat. 1217; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 131(a), (c), 65 Stat. 471.

Historical Note

References in Text. Revenue Act of 1942, §§ 105(a)-(e) (1), 202, 206, referred to in subsec. (a) (1) (B), affected sections 13(a) (2), 13(b) (2), 15, 23(c) (1) (B), 23(c) (2), 26(b), (e), (f), (g), 710(a) (1), 711(a) (1) (A), 711(a) (2) (C), 711(a) (1) (G), and 711(a) (2) (I) of I.R.C.1939.

Revenue Act of 1942, §§ 102 and 103, referred to in subsec. (a) (2) (B), affected sections 11 and 12(b) of I.R.C.1939.

Title II of the Excess Profits Tax Act of 1950, referred to subsec. (f) (2) was classified to sections 15(b) (1), 26(h) (1) (B), (1) (1), 108(f) (2), 207(a) (3) (A) (ii), 362(b) (4), and 421(a) (1) of I.R.C.1939.

1951 Amendments. Subsec. (e) (2) amended by Act Oct. 20, 1951, § 131(c) (1), to insert "applicable to years beginning on October 1, 1950".

Subsec. (f) amended by Acts Oct. 20, 1951, § 131(a) and Jan. 3, 1951, Act Oct. 20, 1951 struck out former par. (2) and inserted in lieu thereof pars. (2) and (3) to provide rules for computation of taxes under the new rates. Act Jan. 3, 1951 added last sentence to former par. (2).

Subsecs. (g)-(k) added by Act Oct. 20, 1951, § 131(a).

Subsec. (l), formerly subsec. (g), renumbered by Act Oct. 20, 1951, § 131(c) (2).

1950 Amendment. Subsec. (e) amended by Act Sept. 23, 1950, § 131(a), which struck out former subsec. (e) relating to special classes of taxpayers and inserted present provisions.

Subsecs. (f) and (g) added by Act Sept. 23, 1950, § 131(a).

1948 Amendment. Subsec. (d) added by Act Apr. 2, 1948, to take care of the taxpayers making returns on a fiscal year basis.

Subsec. (e), formerly subsec. (d), renumbered by Act Apr. 2, 1948.

1945 Amendment. Subsec. (c) added and subsec. (d), formerly subsec. (c), renumbered by Act Nov. 8, 1945.

1944 Amendment. Act Feb. 25, 1944, amended section generally.

Effective Date of 1950 Amendments. Section 131(b) of Act Sept. 23, 1950, provided that the amendment of subsec. (e) should not apply in the case of any taxable year described in subsecs. (a)-(c) of this section.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, provided as follows: "Section 106(a) of the Internal Revenue Code, [1939] as amended by subsection (a) of this section, shall be applicable to taxable years beginning in 1941 and ending after June 30, 1942. The other amendments made by subsection (a) of this section shall be applicable only to taxable years beginning in 1943 and ending in 1944."

Effective Date of 1942 Amendment. Section 140 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning in 1941 and ending after June 30, 1942.

Computation of Tax in Case of Certain Joint Returns. Effective date of 1951 amendments with respect to computation of tax in case of certain joint returns. see note set out under section 12 of I.R.C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that. "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Jan. 3, 1951, 1950 U.S. Code Cong. Service, p. 4027; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053; Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 541; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814.

§ 109. Western hemisphere trade corporations

For the purposes of this chapter, the term "western hemisphere trade corporation" means a domestic corporation all of whose business is done in any country or countries in North, Central, or South America, or in the West Indies, or in Newfoundland and which satisfies the following conditions:

(a) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and

(b) If 90 per centum or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 141, 56 Stat. 838.

Historical Note

Effective Date. Section 101 of Act Oct. 21, 1942, provided that section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 110. Mutual savings banks conducting life insurance business

(a) **Alternative tax.** In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be levied, collected, and paid, in lieu of the taxes imposed by sections 13 and 15, or section 117(c) (1), a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed upon the net income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section has not been enacted; and

(2) a partial tax computed upon the net income (as defined in section 201(c) (7)) of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in Supplement G with respect to life insurance companies.

(b) **Limitations of section.** The provisions of subsection (a) shall be applicable only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company

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under section 201(b). Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521. Title III, § 346(a), 65 Stat. 517.

Historical Note

Effective Date. Section made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 346(c) of Act Oct. 20, 1951.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951]

shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

SUPPLEMENT B.—COMPUTATION OF NET INCOME

[Supplementary to Subchapter B, Part II]

§ 111. Determination of amount of, and recognition of, gain or loss

(a) **Computation of gain or loss.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 113(b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) **Amount realized.** The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(c) **Recognition of gain or loss.** In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this chapter, shall be determined under the provisions of section 112.

(d) **Installment sales.** Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received. 53 Stat. 37.

§ 112. Recognition of gain or loss—

(a) **General rule.** Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) **Exchanges solely in kind—**(1) **Property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) **Stock for stock of same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) **Stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) **Same—Gain of corporation.** No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursu-

ance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) **Transfer to corporation controlled by transferor.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange. Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under subsection (k) it is not to be considered as "other property or money") shall be considered as stock or securities received by such transferor.

(6) **Property received by corporation on complete liquidation of another.** No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(D) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation. If such transfer of all the property does not occur within the taxable year the Commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue quali-

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fied under subparagraph (A) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

(7) Election as to recognition of gain in certain corporate liquidations

(A) General rule. In the case of property distributed in complete liquidation of a domestic corporation, if—

(i) the liquidation is made in pursuance of a plan of liquidation adopted after December 31, 1950, whether the taxable year of the corporation began on, before, or after January 1, 1951; and

(ii) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month in 1951, 1952, or 1953—then in the case of each qualified electing shareholder (as defined in subparagraph (C)) gain upon the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subparagraphs (E) and (F).

(B) Excluded corporation. The term “excluded corporation” means a corporation which at any time between August 15, 1950, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 per centum or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(C) Qualified electing shareholders. The term “qualified electing shareholder” means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subparagraph (A) has been made and filed in accordance with subparagraph (D), but—

(i) in the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 per centum of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(ii) in the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 per centum of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not cor-

porations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(D) **Making and filing of elections.** The written elections referred to in subparagraph (C) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Commissioner with the approval of the Secretary. The filing must be within thirty days after the adoption of the plan of liquidation, and may be by the liquidating corporation or by the shareholder.

(E) **Noncorporate shareholders.** In the case of a qualified electing shareholder other than a corporation—

(i) There shall be recognized, and taxed as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subparagraph (A) (ii), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(ii) There shall be recognized, and taxed as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after August 15, 1950, exceeds his ratable share of such earnings and profits.

(F) **Corporate shareholders.** In the case of a qualified electing shareholder which is a corporation the gain shall be recognized only to the extent of the greater of the two following—

(i) The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after August 15, 1950; or

(ii) Its ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subparagraph (A) (ii), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

(8) **Exchanges and distributions in obedience to orders of Securities and Exchange Commission.** In the case of any exchange or distribution described in section 371, no gain or loss shall be recognized to the extent specified in such section with respect to such exchange or distribution.

(9) **Loss not recognized on certain railroad reorganizations.** No loss shall be recognized if property of a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended,¹ is transferred, after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the National Bankruptcy Act, as amended,²

to a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended,¹ organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding. The term "reorganization," as used in this paragraph, shall not be limited by the definition of such term in subsection (g).

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(10) Gain or loss not recognized on reorganization of corporations in certain receivership and bankruptcy proceedings. No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended 1) is transferred, in a taxable year of such corporation beginning after December 31, 1933, in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership, foreclosure, or similar proceeding, or

(B) in a proceeding under section 77B³ or Chapter X⁴ of the National Bankruptcy Act, as amended,

to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(11) Distribution of stock not in liquidation. If there is distributed, in pursuance of a plan of reorganization, to a shareholder of a corporation which is a party to the reorganization, stock (other than preferred stock) in another corporation which is a party to the reorganization, without the surrender by such shareholder of stock, no gain to the distributee from the receipt of such stock shall be recognized unless it appears that (A) any corporation which is a party to such reorganization was not intended to continue the active conduct of a trade or business after such reorganization, or (B) the corporation whose stock is distributed was used principally as a device for the distribution of earnings and profits to the shareholders of any corporation a party to the reorganization.

(c) Gain from exchanges not solely in kind. (1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5), or within the provisions of subsection (1), of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph or by subsection (1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(d) Same—Gain of corporation. If an exchange would be within the provisions of subsection (b) (4) or (10) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(e) Loss from exchanges not solely in kind. If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, or (10), or within the provisions of subsection (1), of this section if it were not for the fact that the property received in exchange consists not only of prop-

erty permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) Involuntary Conversion. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) **Conversion into similar property.** Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) **Conversion into money where disposition occurred prior to 1951.** Into money, and the disposition of the converted property occurred before January 1, 1951, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For the purposes of this paragraph and paragraph (3), the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(3) **Conversion into money where disposition occurred after 1950.** Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of Gain. If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For the purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of section 113(a) (9), the unadjusted basis of such property or stock would be its cost within the meaning of section 113(a).

(B) Period Within Which Property Must Be Replaced. The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or con-

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demnation of the converted property, whichever is the earlier, and ending—

(i) one year after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate upon application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(C) **Time for Assessment of Deficiency Attributable to Gain Upon Conversion.** If a taxpayer has made the election provided in subparagraph (A), then (i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain upon such conversion is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and (ii) such deficiency may be assessed prior to the expiration of such three-year period notwithstanding the provisions of section 272(f) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) **Time for Assessment of Other Deficiencies Attributable to Election.** If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased prior to the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 272(f) or 275 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

This subsection shall not apply, in the case of property used by the taxpayer as his principal residence, if the destruction, theft, seizure, requisition, or condemnation of residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950.

(g) **Definition of reorganization.** As used in this section (other than subsection (b) (10) and subsection (l)) and in section 113 (other than subsection (a) (22))—

(1) The term "reorganization" means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation, or (C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded, or (D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or (E) a recapitalization, or (F) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(h) **Definition of control.** As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(i) **Foreign corporations.** In determining the extent to which gain shall be recognized in the case of any of the exchanges described in subsection (b) (3), (4), (5), or (6), or described in so much of subsection (c) as refers to subsection (b) (3) or (5), or described in subsection (d), a foreign corporation shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the Commissioner that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(j) Installment obligations.

For nonrecognition of gain or loss in the case of installment obligations, see section 44(d).

(k) **Assumption of liability not recognized.** Where upon an exchange the taxpayer receives as part of the consideration property which would be permitted by subsection (b) (4), (5), or (10) of this section to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumes a liability of the taxpayer or acquires from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as "other property or money" received by the taxpayer within the meaning of subsection (c), (d), or (e) of this section and shall not prevent the exchange from being within the provisions of subsection (b) (4), (5), or (10); except that if, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition was a purpose to avoid Federal income tax on the exchange, or if not such purpose, was not a bona fide business purpose, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this section, be considered as money received by the taxpayer upon the exchange. In any suit or proceeding where the burden is on the taxpayer to prove that such assumption or acquisition is not to be considered as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(l) Exchanges by security holders in connection with certain corporate reorganizations

(1) **General rule.** No gain or loss shall be recognized upon an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (b) (10), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(2) **Exchange occurring in taxable years beginning prior to January 1, 1943.** If the exchange occurred in a taxable year of the person acquiring such stock or securities beginning prior to January 1, 1943, then, under regulations prescribed by the Commissioner with the approval of the Secretary, gain or loss shall be recognized or not recognized—

(A) to the extent that it was recognized or not recognized in the final determination of the tax of such person for such taxable year, if such tax

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was finally determined prior to the ninetieth day after the date of the enactment of the Revenue Act of 1943; or

(B) in cases to which subparagraph (A) is not applicable, to the extent that it would be recognized or not recognized under the latest treatment of such exchange by such person prior to December 15, 1943, in connection with his tax liability for such taxable year.

(m) **Gain from sale or exchange to effectuate policies of Federal Communications Commission.** If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate the policies of the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of subsection (f) of this section. For the purposes of subsection (f) of this section as made applicable by the provisions of this subsection, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, upon such sale or exchange to which subsection (f) of this section is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss upon sale or exchange of property, of a character subject to the allowance for depreciation under section 23(1), remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Commissioner with the approval of the Secretary. Any election made by the taxpayer under this subsection shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place (or, with respect to taxable years beginning before January 1, 1944, by a statement to that effect filed within six months after the date of the enactment of the Revenue Act of 1943 in such manner and form as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary) and such election shall be binding for the taxable year and all subsequent taxable years.

(n) **Gain from sale or exchange of residence.**

(1) **Nonrecognition of gain.** If property (hereinafter in this subsection called "old residence") used by the taxpayer as his principal residence is sold by him and, within a period beginning one year prior to the date of such sale and ending one year after such date, property (hereinafter in this subsection called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(2) **Rules for application of subsection.** For the purposes of this subsection:

(A) An exchange by the taxpayer of his residence for other property shall be considered as a sale of such residence, and the acquisition of a residence upon the exchange of property shall be considered as a purchase of such residence.

(B) If the taxpayer's residence (as a result of its destruction in whole or in part, theft, or seizure) is compulsorily or involuntarily converted into property or into money, such destruction, theft, or seizure shall be considered as a sale of the residence; and if the residence is so converted into property which is used by the taxpayer as his residence, such conversion shall be considered as a purchase of such property by the taxpayer.

(C) In the case of an exchange or conversion described in subparagraph (A) or (B), in determining the extent to which the selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence, the amount realized by the taxpayer upon such exchange or conversion shall be considered the selling price of the old residence.

(D) A residence any part of which was constructed or reconstructed by the taxpayer shall be considered as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in paragraph (1).

(E) If a residence is purchased by the taxpayer prior to the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him prior to the date of the sale of the old residence.

(F) If the taxpayer, during the period described in paragraph (1), purchases more than one residence which is used by him as his principal residence at some time within one year after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence. If within the one year referred to in the preceding sentence property used by the taxpayer as his principal residence is destroyed, stolen, seized, requisitioned, or condemned, or is sold or exchanged under threat or imminence thereof, then for the purposes of the preceding sentence such one year shall be considered as ending with the date of such destruction, theft, seizure, requisition, condemnation, sale, or exchange.

(G) In the case of a new residence the construction of which was commenced by the taxpayer prior to the expiration of one year after the date of the sale of the old residence, the period specified in paragraph (1), and the one year referred to in subparagraph (F) of this paragraph, shall be considered as including a period of 18 months beginning with the date of the sale of the old residence.

(3) **Limitation.** The provisions of paragraph (1) shall not be applicable with respect to the sale of the taxpayer's residence if within one year prior to the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of the provisions of paragraph (1). For the purposes of this paragraph, the destruction, theft, seizure, requisition, or condemnation of property or the sale or exchange of property under threat or imminence thereof, shall not be considered as a sale of such property.

(4) **Basis of new residence.** Where the purchase of a new residence results, under paragraph (1), in the nonrecognition of gain upon the sale of an old residence, in determining the adjusted basis of the new residence as of any time following the sale of the old residence, the adjustments to basis shall include a reduction by an amount equal to the amount of the gain not so recognized upon the sale of the old residence. For this purpose, the amount of the gain not so recognized upon the sale of the old residence includes only so much of such gain as is not recognized by reason of the cost, up to such time, of purchasing the new residence.

(5) **Tenant-stockholder in a cooperative apartment corporation.** For the purposes of this subsection, section 113(b) (1) (K), and section 117(h) (7), references to property used by the taxpayer as

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his principal residence, and references to the residence of a taxpayer, shall include stock held by a tenant-stockholder (as defined in section 23(z) (2)) in a cooperative apartment (as defined in such section) if—

(A) in the case of stock sold, the apartment which the taxpayer was entitled to occupy as such stockholder was used by him as his principal residence, and

(B) in the case of stock purchased, the taxpayer used as his principal residence the apartment which he was entitled to occupy as such stockholder.

(6) Husband and wife. If the taxpayer and his spouse, in accordance with regulations which shall be prescribed by the Secretary pursuant to this paragraph, consent to the application of subparagraph (B) of this paragraph, then—

(A) for the purposes of this subsection, the words 'taxpayer's selling price of the old residence' shall mean the selling price (of the taxpayer, or of the taxpayer and his spouse) of the old residence, and the words 'taxpayer's cost of purchasing the new residence' shall mean the cost (to the taxpayer, his spouse, or both) of purchasing the new residence (whether held by the taxpayer, his spouse, or the taxpayer and his spouse); and

(B) so much of the gain upon the sale of the old residence as is not recognized solely by reason of this paragraph, and so much of the adjustment under paragraph (4) to the basis of the new residence as results solely from this paragraph, shall be allocated between the taxpayer and his spouse as provided in such regulations.

This paragraph shall apply only if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence. In case the taxpayer and his spouse do not consent to the application of subparagraph (B) of this paragraph, then the recognition of gain upon the sale of the old residence shall be determined under this subsection without regard to the rules provided in this paragraph.

(7) Statute of limitations. If the taxpayer during a taxable year sells at a gain property used by him as his principal residence, then—

(A) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire prior to the expiration of three years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(i) the taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain,

(ii) the taxpayer's intention not to purchase a new residence within the period specified in paragraph (1), or

(iii) a failure to make such purchase within such period; and

(B) such deficiency may be assessed prior to the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(8) Members of armed forces. The running of any period of time specified in paragraph (1) or (2) (other than the one year referred to in paragraph (2) (F)) of this subsection shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as

their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence and during an induction period (as defined in section 112 (c) (5) of the Internal Revenue Code of 1954), except that any such period of time as so suspended shall not extend beyond the date four years after the date of the sale of the old residence. For the purpose of this paragraph, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of ninety days or for an indefinite period. 53 Stat. 37, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 213(a)-(c), 53 Stat. 870; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 142 (a), 151(d, e), 56 Stat. 838, 847; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 120(a), 121(a), (b), (d) (1-5), 123(a), 126 (a), 58 Stat. 40-43, 46; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 206(a), 64 Stat. 931; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 316(a), 317(a), 318(a), (b) (1), 65 Stat. 493; Oct. 31, 1951, c. 661, § 1(a), 65 Stat. 733; July 16, 1952, c. 892, § 1, 66 Stat. 735; Aug. 15, 1953, c. 512, Title I, § 101(a), 67 Stat. 615; Aug. 12, 1955, c. 870, § 1, 69 Stat. 716.

¹ So in original. Probably should read "77(m)", which is section 205(m) of Title II, Bankruptcy.

² Section 205 of Title II, Bankruptcy.

³ Section has been amended and incorporated in sections 501-1103 of Title II, Bankruptcy.

⁴ Sections 501-676 of Title II, Bankruptcy.

Historical Note

References in Text. Date of enactment of Revenue Act of 1943, referred to in subsec. (l) (2) (A), was Feb. 25, 1944.

1935 Amendment. Subsec. (n) (3) amended by Act Aug. 12, 1955, § 1, which substituted the words "and during an induction period (as defined in section 112 (c) (5) of the Internal Revenue Code of 1954), except that any such period of time", for the words "and before January 1, 1954, except that any such period."

1953 Amendment. Subsec. (b) (7), amended by Act Aug. 15, 1953 which substituted "1951, 1952, or 1953" for "1951 or 1952" in subparagraph (A) (ii).

1952 Amendment. Subsec. (n) amended by Act July 16, 1952, which added par. (8).

1951 Amendments. Subsec. (b) (7) amended by Act Oct. 20, 1951, § 316(a), which inserted "or 1952" in subpar. (A) (ii).

Subsec. (b) (11) added by Act Oct. 20, 1951, § 317(a).

Subsec. (f) amended generally by Acts Oct. 31, 1951, and Oct. 20, 1951, Act Oct. 31, 1951, divided such subsec. into an opening clause, paragraphs, subparagraphs and clauses, to limit the application of par. (2) to those cases where the disposition of the converted property occurred prior to January 1, 1951, and to add par. (3). Act Oct. 20, 1951, added a sentence to section prior to its general amendment by Act Oct. 31, 1951.

Subsec. (n) added by Act Oct. 20, 1951, § 318(a).

1950 Amendment. Subsec. (b) (7) amended by Act Sept. 23, 1950, to make

section applicable to cases in which liquidation is pursuant to a plan adopted after Dec. 31, 1950, and the transfer of all the property under the liquidation occurs within one calendar month during 1951, and to substitute "August 15, 1950" for "December 10, 1943" wherever appearing.

1944 Amendment. Subsec. (b) (7) added by Act Feb. 25, 1944.

Subsec. (b) (9) amended by Act Feb. 25, 1944, which struck out "1939" and inserted "1938".

Subsec. (b) (10) added by Act Feb. 25, 1944.

Subsec. (c) amended by Act Feb. 25, 1944, which inserted "or within the provisions of subsection (l)" following "(b) (1) (2) (3) or (5)" and inserted "or by subsection (l)" following "paragraph" both in the first paragraph.

Subsec. (d) amended by Act Feb. 25, 1944, which inserted "or (10)" following "subsection (b) (4)".

Subsec. (e) amended by Act Feb. 25, 1944, which inserted "or (10), or within the provisions of subsection (l)" following "subsection (b) (1) to (5), inclusive".

Subsec. (g) amended by Act Feb. 25, 1944, which inserted all material preceding par. (1) for material which read "As used in this section and section 113—" and added catchline.

Subsec. (k) amended by Act Feb. 25, 1944, which struck out "subsection (b) (4) or (5)" wherever appearing and inserting in lieu thereof "subsection (b) (4), (5), or (10)".

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Subsec. (l) added by Act Feb. 25, 1944.

Subsec. (m) added by Act Feb. 25, 1944.

1942 Amendment. Subsec. (b) (9) added by Act Oct. 21, 1942.

Subsec. (f) amended by Act Oct. 21, 1942, which substituted the words "no gain shall be recognized, but loss shall be recognized" for the words "no gain or loss shall be recognized" at end of the first sentence, and substituted the second sentence set out in the text for the sentence which provided that "If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended."

1939 Amendment. Subsec. (b) (5), last sentence, added by Act June 29, 1939, § 213(c).

Subsec. (g) (1) amended by Act June 29, 1939, § 213(b).

Subsec. (k) added by Act June 29, 1939, § 213(a).

Effective Date of 1955 Amendment. Section 2 of Act Aug. 12, 1955, provided that: "The amendment [to subsec. (n) (8) of this section] made by the first section of this Act shall take effect as of December 31, 1953."

Effective Date of 1953 Amendment. Section 101(b) of Act Aug. 15, 1953 provided that the amendment to subsec. (b) (7) should apply with respect to taxable years ending after Dec. 31, 1952.

Effective Date of 1952 Amendment. Section 2 of Act July 16, 1952, provided that the amendment made by Act July 16, 1952 shall be applicable to taxable years ending after December 31, 1950, with respect to residences sold (within the meaning of subsec. (n) of this section) after such date.

Effective Date of 1951 Amendments. Section 3 of Act Oct. 31, 1951, provided that: "The amendments made by the first two sections of this Act [to sections 112(f), 113(a) (9) and 276(f) of I.R.C. 1939] shall be applicable only with respect to taxable years ending after December 31, 1950, except that the provisions of section 112(f) (3), and the provisions of section 113(a) (9), of the Internal Revenue Code [sections 112(f) (3) and 113(a) (9) of I.R.C. 1939], as amended by this Act shall also be applicable to any taxable year ending prior to January 1, 1951, in which (a) any gain was realized upon the conversion of property and the disposition of such converted property occurred (within the meaning of such section 112(f) (3)) after December 31, 1950, or (b) the basis of property is affected by an election made under the provisions of section 112(f) (3) of such code."

Amendment of subsec. (b) (7) (A) (ii) made applicable only to taxable years ending after Dec. 31, 1951, by section 318(c) of Act Oct. 20, 1951. Addition of subsec. (b) (11) made applicable with respect to taxable years ending after Oct.

20, 1951, but shall apply only with respect to distributions of stock made after such date, by section 317(c) of Act Oct. 20, 1951. Amendment of subsec. (f) made applicable to taxable years ending after Dec. 31, 1950, by section 318(c) of Act Oct. 20, 1951. Addition of subsec. (n) made applicable to taxable years ending after Dec. 31, 1950, but subparagraphs (n) (1) and (n) (6) shall apply only with respect to residences sold (within the meaning of the section) after such date, by section 318(c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Section 206(c) of Act Sept. 23, 1950, provided that the amendment of subsec. (b) (7) by said Act Sept. 23, 1950, should be applicable only to taxable years beginning after Dec. 31, 1950.

Effective Date of 1944 Amendment. Amendment of section by Act Feb. 25, 1944, § 121(a), (b), (d) (1-5), was made effective by section 121(e) thereof which provided as follows: "Provisions having the effect of the amendments made by subsection (a) [to section 112(b)], subsection (c) (3) [to section 113(a)], and subsection (d), (2), (3), (4), (5), and (6) [to section 112(d), (e), (g), (k), and section 718], shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1933, but shall not affect any tax liability for any taxable year beginning prior to January 1, 1943. Provisions having the effect of the amendments made by subsection (b) [to section 112], subsection (c) (1) [to section 113(a)], and (2) [to section 113(a)], and subsection (d) (1) [to section 112(c)], shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1931."

Amendment of subsec. (b) adding par. (7) by Act Feb. 25, 1944, § 120(a), was made applicable to taxable years ending after Dec. 31, 1943, by section 120(c) thereof.

Amendment of subsec. (b) adding par. (9), by Act Oct. 21, 1942, § 142(a), was made applicable to taxable years beginning after 1938, by section 142(d) thereof, as amended by Act Feb. 25, 1944, § 126(c).

Addition of subsec. (m) by Act Feb. 25, 1944, § 123(a), was made applicable to taxable years beginning after Dec. 31, 1942, by section 123(b) thereof.

Effective Date of 1942 Amendment. Amendment of subsec. (b), adding par. 9, by Act Oct. 21, 1942, § 142(a), was made applicable to taxable years beginning after Dec. 31, 1939, by section 142(d) thereof.

Amendment of subsec. (f) by Act Oct. 21, 1942, § 151(d, e), was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1939 Amendment. Section 213(e) of Act June 29, 1939 provided that the amendments of this section were made applicable to taxable years beginning after Dec. 31, 1938.

Refund of Overpayments. Act Aug. 10, 1939, c. 666, Title IX, § 910, 53 Stat. 1402, provided that the provisions of section 213(f) of Act June 29, 1939, should apply without regard to the exception therein provided under certain enumerated conditions but that no overpayment determined to have been made for any taxable year by reason of the provisions of said section 910 should be refunded or credited unless a claim for refund was filed within the period of limitations otherwise provided by law for filing a claim for refund for such taxable year, or within one year from the date of enactment of said Act June 29, 1939, whichever of such periods expired the later. See volumes "Title 26—Internal Revenue Acts."

Assumption of Liability; Reorganization; Substantially Proportionate Interests. Section 213(f)-(h) of Act June 29, 1939, relating to assumption of liability not recognized under prior acts, definition of reorganization under prior acts, and substantially proportionate interests under prior acts, is set out in volumes "Title 26—Internal Revenue Acts."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p.m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.
1944—Feb. 25, 1944, 12:49 p.m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.
1942—Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S.Code Cong and Adm News, p. 2423. See, also, Acts July 16, 1952, 1952 U.S.Code Cong. and Adm. News, p. 2298; Oct. 31, 1951, 1951 U.S.Code Cong.Service, p. 2598; Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781; Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053.

§ 113. Adjusted basis for determining gain or loss—

(a) **Basis (unadjusted) of property.** The basis of property shall be the cost of such property; except that—

(1) **Inventory value.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) **Gifts after December 31, 1920.** If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period prior to the date of the gift as provided in subsection (b)) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

(3) **Transfer in trust after December 31, 1920.** If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

(4) **Gift or transfer in trust before January 1, 1921.** If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(5) **Property transmitted at death.**

If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market

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value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust or to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise. If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after August 26, 1937, and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company, then the basis shall be the fair market value of such property at the time of such acquisition or the basis in the hands of the decedent, whichever is lower. In the case of an election made by the executor under section 811(j), the time of acquisition of the property shall, for the purpose of this paragraph, be the applicable valuation date of the property prescribed by such section in determining the value of the gross estate. For the purposes of this paragraph the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory or possession of the United States or any foreign country shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent, if the death of the decedent was after December 31, 1947, and if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under section 811. In the case of property held by a decedent and his surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if the value of any part of the surviving spouse's one-half share of such property was included in determining the value of the gross estate of the decedent and a tax under chapter 3 was payable upon the transfer of the net estate of the decedent, then for the purposes of this paragraph such part of such one-half share of the surviving spouse shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent, if the death of the decedent was after the date of the enactment of the Revenue Act of 1942 and on or before December 31, 1947; but nothing in this sentence shall reduce basis below that which would exist if the Revenue Act of 1948 had not been enacted. For the purposes of this paragraph, the survivor's interest in a joint and survivor's annuity shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent if the death of the decedent was after December 31, 1950, and if the value of any part of such interest was required to be included in determining the value of the decedent's gross estate under section 811.

(6) **Tax-free exchanges generally.** If the property was acquired, after February 28, 1913, upon an exchange described in section 112(b) to (e), inclusive, or section 112(l), the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was

made. If the property so acquired consisted in part of the type of property permitted by section 112(b) or section 112(l) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(7) Transfers to corporation. If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, or

(B) in a taxable year beginning after December 31, 1935, by a corporation in connection with a reorganization,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) Property acquired by issuance of stock or as paid-in surplus. If the property was acquired after December 31, 1920, by a corporation—

(A) by the issuance of its stock or securities in connection with a transaction described in section 112(b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(9) Involuntary conversion. If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in section 112(f) (1) or (2), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This paragraph shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950. In the case of property purchased by the taxpayer which resulted, under the provisions of section 112(f) (3), in the nonrecognition of any part of the gain

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realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(10) **Wash sales of stock.** If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or corresponding provisions of prior income tax laws, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(11) **Property acquired during affiliation.** In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, 45 Stat. 831, or the Revenue Act of 1932, 47 Stat. 213, or the Revenue Act of 1934, 48 Stat. 720, or the Revenue Act of 1936, 49 Stat. 1698, or the Revenue Act of 1938, 52 Stat. 508, shall be determined in accordance with regulations prescribed under section 141(b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141(b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938, applicable to such period.

(12) **Basis established by Revenue Act of 1932.** If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1934, and the basis thereof, for the purposes of the Revenue Act of 1932, 47 Stat. 199, was prescribed by section 113(a) (6), (7), or (9) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(13) **Partnerships.** If the property was acquired, after February 28, 1913, by a partnership and the basis is not otherwise determined under any other paragraph of this subsection, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer

was made. If the property was distributed in kind by a partnership to any partner, the basis of such property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to such property.

(14) **Property acquired before March 1, 1913.** In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(15) **Property received by a corporation on complete liquidation of another.** If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 112(b) (6), then the basis shall be the same as it would be in the hands of the transferor. The basis of property with respect to which election has been made in pursuance of the last sentence of section 113(a) (15) of the Revenue Act of 1936, as amended, shall, in the hands of the corporation making such election, be the basis prescribed in the Revenue Act of 1934, as amended.

(16) **Basis established by revenue act of 1934.** If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1936, and the basis thereof, for the purposes of the Revenue Act of 1934 was prescribed by section 113(a) (6), (7), or (8) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(17) **Property acquired in connection with exchanges and distributions in obedience to certain orders of the Securities and Exchange Commission.** If the property was acquired in a taxable year beginning before January 1, 1942, in any manner described in section 372 prior to its amendment by the Revenue Act of 1942, the basis shall be that prescribed in such section (prior to its amendment by such Act) with respect to such property. If the property was acquired in a taxable year beginning after December 31, 1941, in any manner described in section 372 (other than subsection (a) (2)) after its amendment by such Act, the basis shall be that prescribed in such section (after its amendment by such Act) with respect to such property.

(18) **Property received in certain corporate liquidations.** If the property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock with respect to which gain was realized, but with respect to which, as the result of an election made by him under paragraph (7) of section 112 (b) of this chapter (whether before or after its amendment by any revenue act or of the Revenue Act of 1938, 52 Stat. 487, the extent to which gain was recognized was determined under such paragraph, then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by him, and increased in the amount of gain recognized to him.

(19) **[Property acquired by corporate stock distribution.]**¹ (A) If the property was acquired by a shareholder in a corporation and consists of stock in such corporation, or rights to acquire such stock, acquired by him after February 28, 1913, in a distribution by such corporation (hereinafter in this paragraph called "new stock"), or consists of stock in respect of which such distribution was made (hereinafter in this paragraph called "old stock") and

(i) the new stock was acquired in a taxable year beginning before January 1, 1936; or

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(ii) the new stock was acquired in a taxable year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution;

then the basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations which shall be prescribed by the Commissioner with the approval of the Secretary.

(B) Where the new stock consisted of rights to acquire stock and such rights were sold in a taxable year beginning before January 1, 1939, and there was included in the gross income for such year the entire amount of the proceeds of such sale, then, if before the date of the enactment of the Revenue Act of 1939 the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such new stock should be excluded from gross income for the year of its sale, the basis of the old stock shall be determined without regard to subparagraph (A); and no part of the proceeds of the sale of such new stock shall ever be excluded from the gross income of the year of such sale.

(C) Subparagraph (A) shall not apply if the new stock was acquired in a taxable year beginning before January 1, 1936, and there was included, as a dividend, in gross income for such year an amount on account of such stock, and after such inclusion such amount was not (before the date of the enactment of the Revenue Act of 1939) excluded from gross income for such year.

(D) Subparagraph (A) shall not apply if the new stock or the old stock was sold or otherwise disposed of in a taxable year beginning prior to January 1, 1936, and the basis (determined by a decision of a court or the Board of Tax Appeals, or a closing agreement, and the decision or agreement became final before the ninetieth day after the date of the enactment of the Revenue Act of 1939) for determining gain or loss on such sale or other disposition was ascertained by a method other than that of allocation of the basis of the old stock.

(20) **Property acquired by railroad corporation.** If the property of a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended,² was acquired after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the National Bankruptcy Act, as amended,³

and the acquiring corporation is a railroad corporation, as defined in section 77m of the National Bankruptcy Act, as amended,² organized or made use of to effectuate a plan or reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired. The term "reorganization", as used in this paragraph, shall not be limited by the definition of such term in section 112(g).

(21) **Property acquired by street, suburban, or interurban electric railway corporation.** If the property of any street, suburban, or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the National Bankruptcy Act, as amended,⁴ and the acquiring corporation is a street, suburban, or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate

commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of Chapter X of the National Bankruptcy Act, as amended,⁵ the basis, for any taxable year beginning after December 31, 1939, shall be the same as it would be in the hands of the corporation whose property was so acquired. The term "reorganization", as used in this paragraph, shall not be limited by the definition of such term in section 112(g).

(22) **Property acquired on reorganization of certain corporations.** If the property was acquired by a corporation upon a transfer to which section 112(b) (10), or so much of section 112(d) or (e) as relates to section 112(b) (10), is applicable, then, notwithstanding the provisions of section 270 of the National Bankruptcy Act, as amended,⁵ the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under subsection (b) (3) by reason of a discharge of indebtedness pursuant to the plan of reorganization under which such transfer was made.

(23) **Tax-free distributions.** If the property consists of stock distributed after the date of the enactment of the Revenue Act of 1951 to a taxpayer in connection with a transaction described in section 112(b) (11) (hereinafter in this paragraph called "new stock"), or consists of stock in respect of which such distribution was made (hereinafter in this paragraph called "old stock"), then the basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations prescribed by the Secretary.

(b) **Adjusted basis.** The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) **General rule.** Proper adjustment in respect of the property shall in all cases be made—

(A) For expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made for taxes or other carrying charges, or for expenditures described in section 23 (bb), for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(i) allowed as deductions in computing net income under this chapter or prior income tax laws, and

(ii) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this chapter (other than subchapter E), subchapter E of chapter 2, or prior income, war-profits, or excess-profits tax laws, but not less than the amount allowable under this chapter or prior income tax laws. Clause (ii) of this subparagraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under subsection (d);

(C) in respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

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(D) in the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918, Feb. 24, 1919, c. 18, 40 Stat. 1057, or the Revenue Act of 1921, Nov. 23, 1921, c. 136, 42 Stat. 227, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(E) to the extent provided in section 337(f) in the case of the stock of United States shareholders in a foreign personal holding company; and

(F) to the extent provided in section 28(h) in the case of amounts specified in a shareholder's consent made under section 28;

(G) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 123 of this chapter, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(H) in the case of any bond (as defined in section 125) the interest on which is wholly exempt from the tax imposed by this chapter, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 125(a) (2), and in the case of any other bond (as defined in such section) to the extent of the deductions allowable pursuant to section 125(a) (1) with respect thereto.

(I) in the case of any short-term municipal bond (as defined in section 22(e)), to the extent provided in section 22 (e) (1) (B).

(J) for amounts allowed as deductions as deferred expenses under section 23(cc) (2) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this chapter, but not less than the amounts allowable under such section for the taxable year and prior years.

(K) in the case of a residence the acquisition of which resulted, under the provisions of section 112(n), in the nonrecognition of any part of the gain realized upon the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 112(n) (4).

(L) for deductions to the extent disallowed under section 24(f), notwithstanding the provisions of any other subparagraph of this paragraph.

(M) for amounts allowed as deductions as deferred expenses under section 23(ff) (2) (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's taxes under this chapter, but not less than the amounts allowable under such section for the taxable year and prior years.

(2) **Substituted basis.** The term "substituted basis" as used in this subsection means a basis determined under any provision of subsection (a) of this section or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(A) by reference to the basis in the hands of a transferor, donor, or grantor, or

(B) by reference to other property held at any time by the person for whom the basis is to be determined.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of this subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of

the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(3) Discharge of indebtedness. Where in the case of a corporation any amount is excluded from gross income under section 22(b) (9) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under section 22(b) (9)) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the Commissioner with the approval of the Secretary) in effect at the time of the filing of the consent by the taxpayer referred to in section 22(b) (9). The reduction shall be made as of the first day of the taxable year in which the discharge occurred except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began.

(4) Adjustment of capital structure prior to September 22, 1938. Where a plan of reorganization of a corporation, approved by the court in a proceeding under section 77B of the National Bankruptcy Act, as amended,⁴ is consummated by adjustment of the capital or debt structure of such corporation without the transfer of its assets to another corporation, and a final judgment or decree in such proceeding has been entered prior to September 22, 1938, then the provisions of section 270 of the National Bankruptcy Act, as amended,⁵ shall not apply in respect of the property of such corporation. For the purposes of this paragraph the term "reorganization" shall not be limited by the definition of such term in section 112(g).

(c) Property on which lessee has made improvements. Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludible from gross income under section 22(b) (11). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

(d) Election in respect of depreciation, etc., allowed before 1952. Any person may elect to have clause (ii) of subsection (b) (1) (B) apply in respect of periods since February 28, 1913, and before January 1, 1952. Such an election shall be made in such manner as the Secretary may by regulations prescribe and shall be irrevocable when made, except that an election made on or before December 31, 1952, may be revoked at any time before January 1, 1955. A revocation of an election shall be made in such manner as the Secretary may by regulations prescribe, and no election may be made by any person after he has so revoked an election. The election shall apply in respect of all property held by the person making the election at any time on or before December 31, 1952, and in respect of all periods since February 28, 1913, and before January 1, 1952, during which such person held such property or for which adjustments must be made under subsection (b) (2). An election or a revocation of an election by a transferor, donor, or grantor made after the date of the transfer, gift, or grant of property shall not affect the basis of such

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property in the hands of the transferee, donee, or grantee. No election may be made under this subsection after December 31, 1954. 53 Stat. 40, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § § 213(d), 214 (a), 215(b), 223(b), 53 Stat. 871, 872, 879; Mar. 17, 1941, c. 21, § 1, 55 Stat. 44; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § § 115(b), 126(c), 130(b), 142(b, c), 143, 144(a), 171(h), 56 Stat. 812, 824, 827, 839, 840, 883; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § § 120 (b), 121(c), 122(a), 126(b), 58 Stat. 41-43, 46; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, § 366(a), 62 Stat. 124; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § § 203(b) (1), 204(b), 206(b), 64 Stat. 928, 929, 931; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 520, Title III, § § 303 (b), 309(b), 316(b), 317(b), 318(b) (2), (3), 323(b) (2), 342(b), 65 Stat. 483, 487, 493, 496, 501, 516; Oct. 31, 1951, c. 661, § 2, 65 Stat. 735; July 14, 1952, c. 741, § § 1, 2, 66 Stat. 629; Aug. 15, 1953, c. 512, Title I, II, § § 102(a), 203(a), 67 Stat. 616, 618.

1 Par. (19) of subsec. (a) was enacted without a catchline, which has been supplied by the editor.

2 So in original. Probably should read "77(m)", which is section 205(m) of Title 11, Bankruptcy.

3 Section 205 of Title 11, Bankruptcy.

4 Act July 1, 1898, c. 541, § 77B, added by Act June 7, 1934, c. 424, § 1, 48 Stat. 912, as amended. Act June 22, 1938, c. 575, § 1, 52 Stat. 840, distributed the provisions of section 77B of the Bankruptcy Act throughout chapter 10, Title 11, Bankruptcy, § 501 et seq.

5 Section 670 of Title 11, Bankruptcy.

Historical Note

References in Text. Revenue Act of 1942 and such Act, referred to in subsec. (a) (17), is Act Oct. 21, 1942.

Date of enactment of Revenue Act of 1939, referred to in subsec. (a) (19) (B-D), was June 29, 1939.

Date of enactment of Revenue Act of 1951, referred to in subsec. (a) (23), was Oct. 20, 1951.

Subchapter E of chapter 2, referred to in subsec. (b) (1) (B) (ii), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, § § 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761, and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1953 Amendment. Subsec. (a) (5) amended by Act Aug. 15, 1953, § 203(a), which inserted immediately after the words "revoke the trust", in the second sentence thereof, the words "or to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust."

Subsec. (d) amended by Act Aug. 15, 1953, § 102(a), to permit revocation of election in respect of excessive depreciation and to extend from December 31, 1952 to December 31, 1954 the time within which an election may be made.

1952 Amendment. Subsec. (b) (1) (B) amended by Act July 14, 1952, § 1, to provide that the basis of property shall be adjusted by the amount of the depreciation previously allowable, or by depreciation previously allowed, if that was more than the amount allowable, but only to the extent that the deduction of the ex-

cess amount reduced income or excess profits for any year.

Subsec. (d) added by Act July 14, 1952.

1951 Amendments. Subsec. (a) (5) amended by Act Oct. 20, 1951, § 303(b), to add last sentence.

Subsec. (a) (9) amended by Act Oct. 20, 1951, § 318(b) (2), and Act Oct. 31, 1951, § 2, which added last two sentences.

Subsec. (a) (13) amended by Act Oct. 20, 1951, § 316(b), which inserted "any revenue act" in lieu of "the Revenue Act of 1951".

Subsec. (a) (23) added by Act Oct. 20, 1951, § 317(b).

Subsec. (b) (1) (J) added by Act Oct. 20, 1951, § 309(b).

Subsec. (b) (1) (K) added by Act Oct. 20, 1951, § 318(b) (3).

Subsec. (b) (1) (L) added by Act Oct. 20, 1951, § 323(b) (2).

Subsec. (b) (1) (M) added Act Oct. 20, 1951, § 342(b).

1950 Amendment. Subsec. (a) (18) amended by Act Sept. 23, 1950, § 206(b), which inserted "whether before or after its amendment by the Revenue Act of 1950" following "Chapter".

Subsec. (b) (1) (A) amended by Act Sept. 23, 1950, § 204(b), which inserted "or for expenditures described in section 23(bb)" following "carrying charges".

Subsec. (b) (1) (I) added by Act Sept. 23, 1950, § 203(b) (1).

1948 Amendment. Subsec. (a) (5) amended by Act Apr. 2, 1948, which added last two sentences to prescribe for

the surviving spouse, after the death of the decedent, a new basis for her portion of the property held, at the time of such death, by the decedent and his spouse as community property.

1944 Amendment. Subsec. (a) (6) amended by Act Feb. 25, 1944, which inserted "or section 112(7)" following "112 (b) to (e), inclusive" in the first sentence, and following "property permitted by section 112(b)" in second sentence.

Subsec. (a) (18) amended by Act Feb. 25, 1944, which inserted "of this Chapter or" following "paragraph (7) of section 112(b)" and by striking out the comma preceding "of the Revenue Act of 1938".

Subsec. (a) (20) amended by Act Feb. 25, 1944, which struck out "1939" and inserted "1938".

Subsec. (a) (22) added by Act Feb. 25, 1944.

Subsec. (b) (4) added by Act Feb. 25, 1944.

1942 Amendment. Subsecs. (a) (2, 3, 5, 17) and (b) (1) (A), amended and subsecs. (a) (20, 21), (b) (1) (H), and (c) added by Act Oct. 21, 1942.

In subsec. (a) (2), the first sentence was amended to read as set out in the text. Prior to 1942 amendment, the first sentence read as follows: "If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower."

In subsec. (a) (3), the word "gift" in the clause in parenthesis was added.

In subsec. (a) (5), the last sentence relating to the basis of property in case of optional value for estate tax purposes, was added.

In subsec. (a) (17), the paragraph set out in the text was substituted for the paragraph which read as follows: "If the property was acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property."

In subsec. (b) (1) (A), the words "including taxes and other carrying charges on unimproved and unproductive real property" following the words "properly chargeable to capital account" were stricken out.

1941 Amendment. Subsec. (a) (11), amended by Act Mar. 17, 1941, which inserted "or the Revenue Act of 1938" at the end of the third sentence and after "the Revenue Act of 1936" wherever appearing in the last sentence.

1939 Amendment. Subsec. (a) (6), next to last sentence, added by Act June 29, 1939.

Subsec. (a) (19) added by Act June 29, 1939.

Subsec. (b) (1) (G) added by Act June 29, 1939.

Subsec. (b) (3) added by Act June 29, 1939.

Effective Date of 1953 Amendments. Section 203(b) of Act Aug. 15, 1953 provided that the amendment to subsec. (a) (5) should apply only in the case of property transferred by grantors dying after Dec. 31, 1951 and only with respect to taxable years ending after Dec. 31, 1951.

Section 102(b) of Act Aug. 15, 1953 provided that the amendment to subsec. (d) should become effective as if included in the amendment made by Act July 14, 1952, § 2. See "Effective Date of 1952 Amendment" note under this section.

Section 3 of Act July 14, 1952, provided that: "The amendments made by this Act shall apply in respect of taxable years beginning after December 31, 1938. Provisions having the effect of such amendments shall be deemed to have been included in the revenue laws respectively applicable to taxable years ending after December 31, 1931, and beginning before January 1, 1939."

Effective Date of 1951 Amendments. Amendment of subsec. (a) (5) made applicable with respect to taxable years beginning after Dec. 31, 1950, by section 303(c) of Act Oct. 20, 1951. Amendment of subsec. (a) (9) made applicable to taxable years ending after Dec. 31, 1950, by section 318(c) of Act Oct. 20, 1951. Amendment of subsec. (a) (18) made applicable only to taxable years ending after Dec. 31, 1951, by section 316(c) of Act Oct. 20, 1951. Addition of subsec. (a) (23) made applicable with respect to taxable years ending after Oct. 20, 1951, but shall apply only with respect to distribution of stock after such date, by section 317(c) of Act Oct. 20, 1951. Amendment of subsection (b) (1) by addition of subpar. (K), made applicable to taxable years ending after Dec. 31, 1950, by section 318(c) of Act Oct. 20, 1951. Addition of subsec. (b) (1) (m) made applicable to taxable years ending after Dec. 31, 1950, by section 342 (c) of Act Oct. 20, 1951.

Addition of subsec. (b) (1) (L) made applicable to any taxable year for which a deduction is disallowed by reason of sales, exchanges, or conversions to which sections 24(f) and 117(j) (1), (2) of this title are applicable by section 323(c) of Act Oct. 20, 1951. Amendment of subsec. (b) (1) (J) made applicable to taxable years ending after Dec. 31, 1950, by section 309(d) of Act Oct. 20, 1951.

Effective Date of 1950 Amendment. Amendment of subsec. (a) (18) by Act Sept. 23, 1950, as applicable only to taxable years beginning after Dec. 31, 1950, see note set out under section 112 of I.R.C.1939.

Amendment of subsec. (b) (1) (A) by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1945, see note set out under section 23 of I.R.C.1939.

§ 114. Basis for depreciation and depletion

(a) **Basis for depreciation.** The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

(b) **Basis for depletion**

(1) **General rule.** The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3), and (4) of this subsection.

(2) **Discovery value in the case of mines.** In the case of mines (except mines in respect of which percentage depletion is allowable under paragraph (4) of this subsection) discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance under section 23(m) based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance under section 23(m) be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

(3) **Percentage depletion for oil and gas wells.** In the case of oil and gas wells the allowance for depletion under section 23(m) shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23(m) be less than it would be if computed without reference to this paragraph.

(4) **Percentage depletion for coal and metal mines and for certain other mines and natural mineral deposits**

(A) **In general.** The allowance for depletion under section 23(m) in the case of the following mines and other natural deposit shall be—

(i) in the case of sand, gravel, slate, stone (including pumice and scoria), brick and tile clay, shale, oyster shell, clam shell, granite, marble, sodium chloride, and, if from brine wells, calcium chloride, magnesium chloride, and bromine, 5 per centum,

(ii) in the case of coal, asbestos, brucite, dolomite, magnesite, perlite, wollastonite, calcium carbonates, and magnesium carbonates, 10 per centum,

(iii) in the case of metal mines, apatite, bauxite, fluorspar, flake graphite, vermiculite, beryl, garnet, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, ball clay, sagger clay, china clay, phosphate rock, rock asphalt, trona, bentonite, gilsonite, thenardite, borax, fuller's earth, tripoli, refractory and fire clay, quartzite, diatomaceous earth, metallurgical grade limestone, chemical grade limestone and potash, 15 per centum, and

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(iv) in the case of sulfur, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23(m) be less than it would be if computed without reference to this paragraph.

(B) **Definition of gross income from property.** As used in this paragraph the term "gross income from the property" means the gross income from mining. The term "mining" as used herein shall be considered to include not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills. The term "ordinary treatment processes", as used herein, shall include the following: (i) In the case of coal—cleaning, breaking, sizing, and loading for shipment; (ii) in the case of sulphur—pumping to vats, cooling, breaking, and loading for shipment; (iii) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment; and (iv) in the case of lead, zinc, copper, gold, silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including as an ordinary treatment process electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the furnacing of quicksilver ores. The principles of this subparagraph shall also be applicable in determining gross income attributable to mining for the purposes of sections 450 and 453. 53 Stat. 45, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 145, 56 Stat. 840; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 124(a-c), 58 Stat. 44, 45; Aug. 8, 1947, c. 515, § 15(b, c), 61 Stat. 920; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 207(a), 64 Stat. 931; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304(d), 64 Stat. 1220; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 319(a), (b), 65 Stat. 497.

Historical Note

1951 Amendments. Subsec. (b) (2) amended by Act Oct. 20, 1951, § 319(b), to insert text preceding "discovered by the taxpayer after February 28, 1913".

Subsec. (b) (4)(A) amended by Act Oct. 20, 1951, § 319(a), to set up a new group of minerals to which percentage depletion is available at the rate of 5 per cent, to allow asbestos a 10 per cent

rate, and to set up a new group of non-metallic metals to which the 15 per cent rate is applicable.

Subsec. (b) (4) (B) amended by Act Jan. 3, 1951, which inserted "450 and 453" in lieu of "731 and 735".

1950 Amendment. Subsec. (b) (4) (B) amended by Act Sept. 23, 1950, to redefine term "mining".

1947 Amendment. Subsecs. (b) (2) and (b) (4) amended by Act Aug. 8, 1947, which added to the minerals "china clay, bentonite, gilsonite, and thenardite".

1944 Amendment. Subsec. (b) (2) amended by Act Feb. 25, 1944, which inserted "flake graphite * * * potash" following "fluorspar".

Subsec. (b) (4) amended by Act, Feb. 25, 1944, which changed catchline, added subpar. catchline "(A) In general", amended first sentence of subpar. (A), and added subpar. (B).

1942 Amendment. Subsec. (b) (2, 4) amended by Act Oct. 21, 1942. In subsec. (b) (2), the words "metal, coal, fluorspar, ball and sagger clay, rock asphalt, or sulphur mines" were substituted for the words "metal, coal, or sulphur mines".

Prior to Act Oct. 21, 1942, subsec. (b) (4) read as follows: "(4) Percentage depletion for coal and metal mines and sulphur. The allowance for depletion under section 23(m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this chapter in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section. The above right of election shall be subject to the qualification that this paragraph shall, for the purpose of determining whether the method of computing the depletion allowance follows the property, be considered a continuation of section 114(b) (4) of the Revenue Act of 1934, 48 Stat. 710, and the Revenue Act of 1938, 49 Stat. 1686, and the Revenue Act of 1938, 52 Stat. 494, and as giving no new election in cases where either of such sections would, if applied, give no new election."

Effective Date of 1951 Amendments. Section 319(c) of Act Oct. 20, 1951, as amended by Act July 21, 1952, c. 951, § 5, 68 Stat. 820, provided that the amendments of subsecs (b) (2) and (b) (4) (A) should be effective on and after Jan. 1, 1951.

Section 304(g) of Act Jan. 3, 1951, provided that the amendments of subsec. (b) (4) (B) of this section, sections 122 (d) (6), 391, 396, 3779(b), (c), (g), (i), and 3780(a), and the repeal of section 3807 should be applicable with respect to taxable years ending after June 30, 1950.

Effective Date of 1950 Amendment. Section 207(b) of Act Sept. 23, 1950, provided that the amendment of subsection (b) should be applicable with respect to taxable years beginning after Dec. 31, 1949.

Effective Date of 1947 Amendment. Section 15(d) of Act Aug. 8, 1947, provided: "The amendments made by subsections (b) and (c) of this section [section 15 of Act Aug. 8, 1947] shall be applicable with respect to taxable years beginning after December 31, 1946."

Effective Date of 1944 Amendment. Section 124(d) of Act Feb. 25, 1944, provided "The amendments made by subsections (a) and (b) inserting flake graphite in section 114(b) (2) and (4) of the Internal Revenue Code [1939] shall be applicable with respect to taxable years beginning after December 31, 1942. A provision having the effect of the amendment made by subsection (c) shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1931."

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Repeals. Section 15(a) of Act Aug. 8, 1947, repealed section 124 (e) of Act Feb. 25, 1944, which provided for the termination of amendments to section by section 124(a), (b) of Act Feb. 25, 1944, with respect to any taxable year beginning on or after the date of termination of hostilities. Said section 15(a) also provided in part that the repeal was effective as of Feb. 25, 1944.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:11 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

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amending this section, 1939, to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and

purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong Service, p. 1781. See, also, Acts Dec. 2, 1950, 1950 U.S. Code Cong. Service, p. 4027; Act Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1608.

§ 115. Distributions by corporations

(a) **Distribution by corporations.** The term "dividend" when used in this chapter (except in section 201(c) (5), section 204(c) (11) and section 207(a) (2) and (b) (3) (where the reference is to dividends of insurance companies paid to policy holders)) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. In the case of a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which the distribution is made under section 504(c) or section 506 or a corresponding provision of a prior income-tax law, is a personal holding company under the law applicable to such taxable year, such term also means any distribution (whether or not a dividend as defined in the preceding sentence) to its shareholders, whether in money or in other property, to the extent of its subchapter A net income, less the sum of the following:

- (1) The net operating loss credit provided in section 26(c) (1);
- (2) The dividend carry-over provided in section 27(c); and
- (3) The deduction for amounts for retirement of indebtedness provided in section 504(b).

(b) **Source of distributions.** For the purposes of this chapter every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before March 1, 1913, may be distributed exempt from tax, after the earnings and profits accumulated after February 28, 1913, have been distributed, but any such tax-free distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113. The preceding sentence shall not apply to a distribution which is a dividend within the meaning of the last sentence of subsection (a).

(c) **Distributions in liquidation.** Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 111, but shall be recognized only to the extent provided in section 112. In the case of amounts distributed (whether before January 1, 1939, or on or after such date) in partial liquidation (other than a distribution to which the provisions of subsection (h) of this section are applicable) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits. If any distribution in partial liquidation or in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) is made by a foreign corporation which with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 331(a) (2)) existed after August 26,

1937, and before January 1, 1938, then, despite the foregoing provisions of this subsection, the gain recognized resulting from such distribution shall be considered as a gain from the sale or exchange of a capital asset held for not more than 6 months.

(d) **Other distributions from capital.** If any distribution made by a corporation to its shareholders is not out of increase in value of property accrued before March 1, 1913, and is not a dividend, then the amount of such distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. This subsection shall not apply to a distribution in partial or complete liquidation or to a distribution which, under subsection (f) (1), is not treated as a dividend, whether or not otherwise a dividend.

(e) **Distributions by personal service corporations.** Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918, 40 Stat. 1070, or section 218 of the Revenue Act of 1921, 42 Stat. 245, shall be exempt from tax to the distributees.

(f) **Stock dividends—(1) General rule.** A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

(2) **Election of shareholders as to medium of payment.** Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (A) in its stock or in rights to acquire its stock, of a class which if distributed without election would be exempt from tax under paragraph (1), or (B) in money or any other property (including its stock or in rights to acquire its stock, of a class which if distributed without election would not be exempt from tax under paragraph (1)), then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid.

(g) **Redemption of stock.**

(1) **In general.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

(2) **Redemption through use of subsidiary corporation.** If stock of a corporation (hereinafter referred to as the issuing corporation) is acquired by another corporation (hereinafter referred to as the acquiring corporation) and the issuing corporation controls (directly or indirectly) the acquiring corporation, the amount paid for the acquisition of the stock shall constitute a taxable dividend from the issuing corporation to the extent that the amount paid for such stock would have been considered, under paragraph (1), as essentially equivalent to a taxable dividend if such amount had been distributed by the acquiring corporation to the issuing corporation and had been applied by the issuing corporation in redemption of its stock. For the purposes of this paragraph, control means the ownership of stock possessing at least 50 per centum of the total combined

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voting power of all classes of stock entitled to vote or at least 50 per centum of the total value of shares of all classes of stock of the corporation.

(8) **Redemption of stock to pay death taxes.** The provisions of this subsection shall not apply to such part of any amount so distributed with respect to stock the value of which is included in determining the value of the gross estate of a decedent in accordance with section 811, as is distributed after such decedent's death and within the period of limitations for the assessment of estate tax provided in section 874 (a) (determined without the application of section 875) or within 90 days after the expiration of such period, and as is not in excess of the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death: *Provided*, That the value of the stock in such corporation for estate tax purposes comprises more than 35 per centum of the value of the gross estate of such decedent.

(h) **Effect on earnings and profits of distributions of stock.** The distribution (whether before January 1, 1939, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property or money, shall not be considered a distribution of earnings or profits of any corporation—

(1) if no gain to such distributee from the receipt of such stock or securities, property or money, was recognized by law, or

(2) if the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under section 115(f) of the Revenue Act of 1934, 48 Stat. 712, or a corresponding provision of a prior Revenue Act.

As used in this subsection the term "stock or securities" includes rights to acquire stock or securities.

(i) **Definition of partial liquidation.** As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(j) **Valuation of dividend.** If the whole or any part of a dividend is paid to a shareholder in any medium other than money the property received other than money shall be included in gross income at its fair market value at the time as of which it becomes income to the shareholder.

(k) **Consent distributions.**

For taxability as dividends of amounts agreed to be included in gross income by shareholders' consents, see section 28.

(l) **Effect on earnings and profits of gain or loss and of receipt of tax-free distributions.** The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(1) for the purpose of the computation of earnings and profits of the corporation, shall be determined, except as provided in paragraph (2), by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(2) for the purpose of the computation of earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing net income under the law applicable

to the year in which such sale or disposition was made. Where in determining the adjusted basis used in computing such realized gain or loss the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings or profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For the purposes of this subsection, a loss with respect to which a deduction is disallowed under section 118, or a corresponding provision of a prior income-tax law, shall not be deemed to be recognized. Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(1) No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made.

(2) No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received.

(m) Earnings and profits—Increase in value accrued before March 1, 1913.

(1) If any increase or decrease in the earnings or profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (1) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (1) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss, exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913. 53 Stat. 46, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 214(b), 53 Stat. 873; Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 501(a), (b), 54 Stat. 1004; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 146(a), 147, 166, 186(a) (1), (b), 56 Stat. 841, 875, 895, 896; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 512(a), 58 Stat. 75; June 25, 1947, c. 144, § 1, 61 Stat. 179; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 208(a), 209(a), 64 Stat. 931, 932; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 320(a), 65 Stat. 498.

Historical Note.

1951 Amendment. Subsec. (g) (3) amended by Act Oct. 20, 1951, § 320(a), to substitute "35 per centum of the value of the gross estate" in lieu of "50 per centum of the value of the net estate."

1950 Amendment. Subsec. (g) amended by Act Sept. 23, 1950, §§ 208(a), 209(a),

cited to text, which reenacted par. (1) and added pars. (2) and (3).

1947 Amendment. Subsec. (a) amended by Act June 25, 1947, which allowed deduction of net operating loss credit, dividend carry-over, and amounts for retirement of indebtedness in determining div-

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idend distributions of a personal holding company.

1944 Amendment. Subsec. (a) amended by Act Feb. 25, 1944, which inserted "(to the extent of its subchapter A net income, whether or not a dividend as defined in the preceding sentence)" following "distribution" where first appearing in last sentence.

1942 Amendment. Subsecs. (a) and (b), second sentences, and subsec. (l), fourth sentence added and subsec. (a), first sentence amended by Act Oct. 21, 1942.

1940 Amendment. Subsecs. (l) and (m) added by Act Oct. 8, 1940, § 501(a).

1939 Amendment. Subsec. (d) amended by Act June 29, 1939.

Effective Date of 1951 Amendment. Amendment of subsec. (g) (1) made applicable to taxable years ending on or after Oct. 20, 1951, but shall apply only to amounts distributed on or after such date, by section 320(b) of Act Oct. 20, 1951.

Effective Date of 1950 Amendment. Section 208(b) of Act Sept. 23, 1950, provided that the amendment of par. (1) and the addition of par. (2) should be applicable with respect to taxable years ending after Aug. 31, 1950, but should apply only with respect to amounts received after Aug. 31, 1950.

Section 209(b) of Act Sept. 23, 1950, provided that the addition of par. (3) should be applicable to tax years ending on or after Sept. 23, 1950, but should apply only to amounts distributed on or after Sept. 23, 1950.

Effective Date of 1947 Amendment. Amendment of subsec. (c) by section 1 of Act June 25, 1947, was made effective for all taxable years beginning after Dec. 31, 1943, by section 2 of said Act.

Effective Date of 1944 Amendment. Amendment of subsec. (a) by Act Feb. 25, 1944, was made effective for all taxable years beginning after Dec. 31, 1941, by section 512(b) thereof.

Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, § 166, affecting first sentence, and amendment of subsec. (c) by section 147 of said Act were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendments of subsecs. (a) and (b), adding last sentences to each subsec. were made effective by section 186(f) and (g) of Act Oct. 21, 1942, as follows:

"(f) The amendments made by subsections (a) to (e), inclusive (to section 28 (d) (1), 115(a, b), 504(c) (1, 2) and 506 (c) (1)) shall be effective as of the date of enactment of the laws amended thereby.

"(g) The amendments made by subsections (a) to (d), inclusive (to sections 115(a, b), 504(c) (1, 2) and 506(c) (1)), shall not apply with respect to any distribution, which is a dividend solely by

reason of the last sentence of section 115 (a) of the applicable revenue law, made prior to the date of enactment of this Act (Oct. 21, 1942, 4:30 p. m. E.W.T.) by a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which it is made under section 504(c) or section 506 (of title 26) or a corresponding provision of a prior income tax law, is a personal holding company under the law applicable to such taxable year, unless—

"(1) The corporation (under regulations prescribed by the Commissioner with the approval of the Secretary) files, within one year after the date of the enactment of this Act, a claim for the benefit of this section on account of such distribution;

"(2) Such claim is accompanied by signed consents made under oath by each person to whom the corporation made such distribution agreeing to the inclusion of the amount of such distribution to him in his gross income as a taxable dividend. If any such person is no longer in existence or is under disability then the consent may be made by his legal representative; and

"(3) Each such consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143(b) or 144 of the applicable revenue law to be deducted and withheld by the corporation if the amount of the distribution to the shareholder had been paid to the shareholder in cash as a dividend. The amount accompanying such consent shall be credited against the tax under the applicable revenue law imposed by section 211(a) or 231(a) (of title 26) upon the shareholder."

Amendment of subsec. (l) by Act Oct. 21, 1942, § 146(a), was made effective by section 146(b) thereof as follows: "The amendment made by this section shall be effective as if it were made by section 501 of the Second Revenue Act of 1940 (eff. Oct. 8, 1940, 11 p. m., E.S.T., applicable to taxable years beginning after Dec. 31, 1938)."

Effective Date of 1940 Amendment. Amendment adding subsections (l) and (m) made applicable to taxable years beginning after Dec. 31, 1938 by section 501 (b) of Act Oct. 8, 1940.

Effective Date of 1939 Amendment. Amendment of subsec. (d) made applicable to taxable years beginning after Dec. 31, 1938, by section 214(d) of Act June 29, 1939.

Effective Date of Prior Acts. Section 501(c) of Act Oct. 8, 1940, provided as follows:

"(c) Under prior acts.—For the purposes of the Revenue Act of 1938 or any prior Revenue Act the amendments made to the Internal Revenue Code by subsection (a) of this section shall be effective as if they were a part of each such

Revenue Act on the date of its enactment. Nothing in this subsection shall affect the tax liability of any taxpayer for any year which, on September 20, 1940, was pending before, or was theretofore determined by, the Board of Tax Appeals, or any court of the United States."

Interest On Overpayments. Section 3 of Act June 25, 1947, provided: "No interest shall be allowed or paid in respect of any overpayment of tax resulting from the foregoing amendment [section 1 of Act June 25, 1947,]."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:11 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Act June 25, 1947, 1947 U.S. Code Cong. Service, p. 1213.

§ 116. Exclusions from gross income

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) Earned income from sources without the United States

(1) **Bona fide resident of foreign country.** In the case of an individual citizen of the United States, who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in paragraph (3)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) **Presence in foreign country for 17 months.** In the case of an individual citizen of the United States, who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in paragraph (3)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph. If the 18-month period includes the entire taxable year, the amount excluded under this paragraph for such taxable year shall not exceed \$20,000. If the 18-month period does not include the entire taxable year, the amount excluded under this paragraph for such taxable year shall not exceed an amount which bears the same ratio to \$20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year.

(3) **Definition of earned income.** For the purposes of this subsection, "earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, under regulations prescribed by the Commissioner with the ap-

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proval of the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

(b) **Repealed.** April 12, 1939, c. 59, Title I, § 2, 53 Stat. 575.

(c) **Income of Foreign Governments and of International Organizations.** The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States.

(d) **Income of states, municipalities, etc.** Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(e) **Bridges to be acquired by state or political subdivision.** Whenever any State or political subdivision thereof, in pursuance of a contract to which it is not a party entered into before May 29, 1928, is to acquire a bridge—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such bridge prior to any division of such proceeds, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of or would be applied for the

benefit of such State or political subdivision, then a tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State or political subdivision (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision, bears to the amount of the net income from the operation of such bridge for such taxable year. No such refund shall be made unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(f) Dividend from "China Trade Act" corporation. In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U.S.C., Title 15, c. 4), if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(g) Shipowners' protection and indemnity associations. The receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends, and rents.

(h) Compensation of employees of foreign governments or of the Commonwealth of the Philippines

(1) Rule for exclusion. Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be.

(2) Certificate by Secretary of State. The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign coun-

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tries, and the character of the services performed by employees of the Government of the United States in foreign countries. If the Commonwealth of the Philippines grants an equivalent exemption to the employees of the United States performing services in such Commonwealth the Secretary of State shall certify such fact to the Secretary of the Treasury and the character of the services performed by employees of the Government of the United States in such Commonwealth.

(i) Treasury bills.

For exemption from taxation of gain derived from the sale or other disposition of Treasury Bills, issued after June 17, 1930, under the second Liberty bond act, as amended, see Act of June 17, 1930, c. 512, 46 Stat. 775 (U.S.C., Title 31, § 754.)

[j. Cost-of-living allowances paid to civilian officers and employees stationed outside of continental United States]

In the case of a clerk or employee in the Foreign Service of the United States, amounts received as cost-of-living allowances under authority of section 3, as amended, of the Act of February 23, 1931; and in the case of an ambassador, minister, diplomatic, consular, or Foreign Service officer, amounts received as post allowances under the authority of section 12, as amended and renumbered, of the Act of May 24, 1924; and in the case of other civilian officers or employees of the Government of the United States stationed outside continental United States, amounts received as cost-of-living allowances in accordance with regulations approved by the President.

(k) In the case of an officer or employee of the Foreign Service of the United States, amounts received by such officer or employee as allowances or otherwise under the terms of subchapter IX of chapter 14 of Title 22.

(l) Income from sources within Puerto Rico.

(1) Resident of Puerto Rico for entire taxable year. In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico. In the case of an individual citizen of the United States, who has been a bona fide resident of Puerto Rico for a period of at least two years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph. 53 Stat. 48, amended April 12, 1939, c. 59, Title I, § 2, 53 Stat. 575; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 148(a), 149(a), 56 Stat. 841, 842; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, §§ 107(b), 125(a), 58 Stat. 32, 46; Dec. 29, 1945, c. 652, Title I, § 4(a, b), 59 Stat. 670; Aug. 13, 1946, c. 957, Title X, § 1051, 60 Stat. 1032; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(c), 64 Stat. 944; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 321(a), 65 Stat. 498; Aug. 15, 1953, c. 512, Title II, § 204(a), 67 Stat. 618.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (i), is classified to sections 745, 747, 752-754b, 757, 757b-757e, 758, 760, 764-766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Section 3, as amended, of the Act of February 3, 1931, and section 12, as amended and renumbered, of the Act of May 24, 1924, referred to in subsec. (j), were repealed by Act Aug. 13, 1946, c. 957, Title XI, § 1131, 60 Stat. 1040. Provisions similar to section 3 and section 12 of said Acts are now carried in section 1131 of Title 22, Foreign Relations and Inter-course.

1953 Amendment. Subsec. (a) (2) amended by Act Aug. 15, 1953 to limit the exclusion of earned income from sources without the United States to \$20,000 if the taxpayer is abroad for the full taxable year or to a portion thereof if the taxpayer is abroad for less than the taxable year.

1951 Amendment. Subsec. (a) (1), (2), amended by Act Oct. 20, 1951, § 321(a), to grant exclusion with respect to "an uninterrupted period which includes an entire taxable year" to a bona fide resident of a foreign country, and to provide that income earned abroad by a citizen who is present in a foreign country or countries for 17 out of 18 months is to be excluded from income.

1950 Amendment. Subsec. (l) added by Act Sept. 23, 1950.

1946 Amendment. Subsec. (k) added by Act Aug. 13, 1946.

1945 Amendment. Subsec. (c) amended by Act Dec. 29, 1945, § 4(a), text, which inserted "or international organizations" wherever appearing.

Subsec. (h) (1) amended by Act Dec. 29, 1945, § 4(b), which inserted "or of an international organization" and "or an international organization", where appearing in par. (1), and inserted ", in the case of an employee of a foreign government or of the Commonwealth of the Philippines" following "If" in pars. (1) (B), and (1) (C).

1944 Amendment. Subsec. (a) amended by Act Feb. 25, 1944, which struck out "if such amounts would constitute earned income as defined in section 25(a) if received from sources within the United States" and inserted in lieu thereof "if such amounts constitute earned income as defined in paragraph (3)" in both pars. (1), and (2), and added par. (3).

Subsec. (j) added by Act Feb. 25, 1944.

1942 Amendment. Subsecs. (a, h) amended by Act Oct. 21, 1942.

1939 Amendment. Subsec. (b), relating to teachers in Alaska and Hawaii, was repealed by Act April 12, 1939. Prior to its repeal, said subsec. read as follows: "(b) Teachers in Alaska and

Hawaii.—In the case of an individual employed by Alaska or Hawaii or any political subdivision thereof as a teacher in any educational institution, the compensation received as such. This subsection shall not exempt compensation paid directly or indirectly by the Government of the United States."

Effective Date of 1953 Amendment. Section 204(c) of Act Aug. 15, 1953 provided that: "The amendment [to subsec.

(a) (2)] made by subsection (a) shall apply with respect to taxable years ending after December 31, 1952, but only to amounts received after such date. In the case of any taxable year beginning in 1952 and ending in 1953 the exclusion of amounts received after December 31, 1952, shall not exceed an amount which is the same proportion of \$20,000 as the number of days in such taxable year after December 31, 1952, is of 365 days. The amendments [to subsec. (a) (2) and to section 1621(a) (8) (A) of I.R.C.1939] made by subsections (a) and (b) shall not affect the liability of any employer to deduct and withhold the tax imposed by section 1622 [section 1622 of I.R.C.1939] in the case of any remuneration paid before the first day of the first month beginning more than ten days after the date of the enactment of this Act [Aug. 15, 1953]."

Effective Date of 1951 Amendment. Amendment of subsec. (a) (1), (2), made applicable to taxable years beginning after Dec. 31, 1950, and amendment of subsec. (a) (5) (A) made applicable to wages paid on or after Jan. 1, 1952, by section 321(c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C.1939.

Effective Date of 1946 Amendment. Amendment of section by Act Aug. 13, 1946, was made effective three months after Aug. 13, 1946, by section 1141 of said Act Aug. 13, 1946.

Effective Date of 1945 Amendment. Amendment of subsec. (c) by Act Dec. 29, 1945, § 4(a), was made applicable to taxable years after Dec. 31, 1943, by section 4(a) thereof.

Amendment of subsec. (h) (1) by Act Dec. 29, 1945, § 4(b), was made effective to taxable years after Dec. 31, 1943, by section 4(b) thereof.

Effective Date of 1944 Amendment. Amendment of subsec. (a) by Act Feb. 25, 1944, § 107(b), was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Addition of subsec. (j) by Act Feb. 25, 1944, § 125(a), was made applicable to taxable years beginning after Dec. 31, 1942, by section 125(b).

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Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, § 148(a), was made effective by section 148(b) thereof as follows: "(b) The amendment made by subsection (a) (to section 116(a)) shall be applicable with respect to taxable years beginning after December 31, 1942, and so much of the amendment made by subsection (a) as inserts paragraph (2) in section 116(a) shall also be applicable to taxable years beginning in 1942."

Amendment of subsec. (h) by Act Oct. 21, 1942, § 149(a), was made applicable to taxable years beginning after Dec. 31, 1939, by section 149(b) thereof.

Exemptions. Various exemptions were contained in Act Sept. 8, 1916, c. 463, § 4, 39 Stat. 758, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329; Act Sept. 8, 1916, c. 463, §§ 11b, 30, 39 Stat. 767, as amended by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336; Act Oct. 3, 1913, c. 16, § ii, subd. B, 38 Stat. 167, 172.

Philippines. The Commonwealth of the Philippines, referred to in subsec. (h), is now the Republic of the Philippines under Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352 which granted independence to the Philippines pursuant to the provisions of section 1394 of Title 22, Foreign Relations and Inter-

course, under which section said Proc. No. 2695 is set out as a note.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:11 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053; Dec. 29, 1945, 1945 U.S. Code Cong. Service, p. 946.

§ 117. Capital gains and losses

(a) **Definitions.** As used in this chapter—

(1) **Capital assets.** The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(A) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(B) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1), or real property used in his trade or business;

(C) a copyright; a literary, musical, or artistic composition; or similar property; held by—

(i) a taxpayer, whose personal efforts created such property, or

(ii) a taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property; or

(D) an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue.

(2) **Short-term capital gain.** The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent such gain is taken into account in computing gross income;

(3) **Short-term capital loss.** The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not

more than 6 months, if and to the extent such loss is taken into account in computing net income;

(4) **Long-term capital gain.** The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such gain is taken into account in computing gross income;

(5) **Long-term capital loss.** The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such loss is taken into account in computing net income;

(6) **Net short-term capital gain.** The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year;

(7) **Net short-term capital loss.** The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) **Net long-term capital gain.** The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) **Net long-term capital loss.** The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(10) **Net capital gain.**

(A) **Corporations.** In the case of a corporation, the term "net capital gain" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges; and

(B) **Other taxpayers.** In the case of a taxpayer other than a corporation, the term "net capital gain" means the excess of (i) the sum of the gains from sales or exchanges of capital assets, plus net income of the taxpayer or \$1,000, whichever is smaller, over (ii) the losses from such sales or exchanges. For purposes of this subparagraph, net income shall be computed without regard to gains or losses from sales or exchanges of capital assets. If the tax is to be computed under Supplement T, "net income" as used in this subparagraph shall be read as "adjusted gross income".

(11) **Net capital loss.** The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under subsection (d). For the purpose of determining losses under this paragraph, amounts which are short-term capital losses under subsection (e) (1) shall be excluded.

(b) **Deduction from gross income.** In the case of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 per centum of the amount of such excess shall be a deduction from gross income. In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any), of the gains for the taxable year from sales or exchanges of capital assets, which, under section 162(b) or (c), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

(c) **Alternative taxes.**

(1) **Corporations.** If for any taxable year the net long-term capital gain of any corporation exceeds the net short-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 13, 14, 15, 204, 207 (a) (1) or (3), 421, and 500, a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

(A) A partial tax shall first be computed upon the net income reduced by the amount of such excess, at the rates and in the manner as if this subsection had not been enacted.

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(B) There shall then be ascertained an amount equal to 25 per centum of such excess, except that in the case of any taxable year beginning after March 31, 1951, and before April 1, 1954, there shall be ascertained an amount equal to 26 per centum of such excess.

(C) The total tax shall be the partial tax computed under subparagraph (A) plus the amount computed under subparagraph (B).

(2) **Other taxpayers.** If for any taxable year the net long-term capital gain of any taxpayer (other than a corporation) exceeds the net short-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12 (or, in the case of certain tax-exempt trusts, in lieu of the tax imposed by section 421), a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

(A) A partial tax shall first be computed upon the net income reduced by an amount equal to 50 per centum of such excess, at the rates and in the manner as if this subsection had not been enacted.

(B) There shall then be ascertained an amount equal to 25 per centum of the excess of the net long-term capital gain over the net short-term capital loss. In the case of any taxable year beginning after October 31, 1951, and before November 1, 1953, there shall be ascertained, in lieu of the amount computed under the preceding sentence, an amount equal to 26 per centum of the excess of the net long-term capital gain over the net short-term capital loss.

(C) The total tax shall be the partial tax computed under subparagraph (A) plus the amount computed under subparagraph (B).

(d) **Limitation on capital losses.**

(1) **Corporations.** In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(2) **Other taxpayers.** In the case of a taxpayer, other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus the net income of the taxpayer of 1 \$1,000, whichever is smaller. For purposes of this paragraph, net income shall be computed without regard to gains or losses from sales or exchanges of capital assets. If the tax is to be computed under Supplement T, "net income" as used in this paragraph shall be read as "adjusted gross income".

(e) **Capital loss carry-over.**

(1) **Method of computation.** If for any taxable year beginning after December 31, 1941, the taxpayer has a net capital loss, the amount thereof shall be a short-term capital loss in each of the five succeeding taxable years to the extent that such amount exceeds the total of any net capital gains of any taxable years intervening between the taxable year in which the net capital loss arose and such succeeding taxable year. For purposes of this paragraph a net capital gain shall be computed without regard to such net capital loss or to any net capital losses arising in any such intervening taxable years.

(2) **Rule for application of capital loss carry-over from 1941.** The amount of the net short-term capital loss of the last taxable year beginning in 1941 (computed without regard to amounts treated as short-term capital losses from the preceding taxable year), which is not in excess of the net income for such taxable year, shall, to the extent of the net short-term capital gain for the succeeding taxable year (computed without regard to this paragraph), be a short-term capital loss of such succeeding taxable year.

(f) **Retirement of bonds, etc.** For the purposes of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued

by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

(g) **Gains and losses from short sales, etc.** For the purpose of this chapter—

(1) gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and

(2) gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as short-term capital gains or losses; and

(3) gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 124A (relating to amortization deduction), shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(h) **Determination of period for which held.** For the purpose of this section—

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if under the provisions of section 113, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged. For the purposes of this paragraph, an involuntary conversion described in section 112(f) shall be considered an exchange of the property converted for the property acquired.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112(g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705, or under the provisions of section 371(c) of the Revenue Act of 1938 or this chapter, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or section 118 of the Revenue Act of 1928, 45 Stat. 826, or the Revenue Act of 1932, 47 Stat. 208, or the Revenue Act of 1934, 48 Stat. 715, or the Revenue Act of 1936, 49 Stat. 1692, or the Revenue Act of 1938, 52 Stat. 503, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) In determining the period for which the taxpayer has held stock or rights to acquire stock received upon a distribution, if the basis of such stock or rights is determined under section 113(a) (19) (A), there shall (under regulations prescribed by the Commissioner with the approval of the Secretary) be included the period for which he held the stock in the distributing corporation prior to the receipt of such stock or rights upon such distribution.

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(6) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date upon which the right to acquire was exercised.

(7) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 112(n) in the non-recognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, there shall be included the period for which such other residence had been held as of the date of such sale, exchange, or involuntary conversion.

(i) **Bond, etc., losses of banks.** For the purposes of this chapter, in the case of a bank, as defined in section 104, if the losses of the taxable year from sales or exchanges of bonds, debentures, notes, or certificates, or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof) with interest coupons or in registered form, exceed the gains of the taxable year from such sales or exchanges, no such sale or exchange shall be considered a sale or exchange of a capital asset.

(j) **Gains and losses from involuntary conversion and from the sale or exchange of certain property used in the trade or business.**

(1) **Definition of property used in the trade or business.** For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or (C) a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in subsection (a) (1) (c). Such term also includes timber or coal with respect to which subsection (k) (1) or (2) is applicable and unharvested crops to which paragraph (3) is applicable. Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from the date of acquisition. Such term does not include poultry.

(2) **General rule.** If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing net income, except that subsection (d) shall not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business

or capital assets held for more than 6 months shall be considered losses from a compulsory or involuntary conversion.

(S) **Sale of land with unharvested crop.** In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted as described in paragraph (2)) at the same time and to the same person, the crop shall be considered as "property used in the trade or business".

(k) **Gain or loss upon the cutting of timber**

(1) If the taxpayer so elects upon his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than six months prior to the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. In case such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the adjusted basis for depletion of such timber in the hands of the taxpayer and the fair market value of such timber. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this paragraph such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding upon the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Commissioner, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this paragraph except with the consent of the Commissioner.

(2) In the case of the disposal of timber or coal (including lignite), held for more than 6 months prior to such disposal, by the owner thereof under any form or type of contract by virtue of which the owner retains an economic interest in such timber or coal, the difference between the amount received for such timber or coal and the adjusted depletion basis thereof shall be considered as though it were a gain or loss, as the case may be, upon the sale of such timber or coal. Such owner shall not be entitled to the allowance for percentage depletion provided for in section 114(b) (4) with respect to such coal. This paragraph shall not apply to income realized by the owner as a co-adventurer, partner, or principal in the mining of such coal. The date of disposal of such coal shall be deemed to be the date such coal is mined. In determining the gross income, the adjusted gross income, or the net income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this paragraph. This paragraph shall have no application, in the case of coal, for the purposes of applying section 102 or subchapter A of chapter 2 (including the computation under section 117(c) (1) of a tax in lieu of the tax imposed by section 500).

(l) **Short sales, etc.** In the case of a short sale of property made by the taxpayer after the date of the enactment of the Revenue Act of 1950:

(1) **Short-term gains and holding periods.** If substantially identical property has been held by the taxpayer on the date of such short sale for not more than 6 months (determined without regard to the effect, under subparagraph (B) of this paragraph, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(A) any gain upon the closing of such short sale shall be considered as a gain upon the sale or exchange of a capital asset held for not more than

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6 months (notwithstanding the period of time any property used to close such short sale has been held); and

(B) the holding period of such substantially identical property shall be considered to begin (notwithstanding the provisions of subsection (h)) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This subparagraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For the purposes of this paragraph, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(2) **Long-term losses.** If substantially identical property has been held by the taxpayer on the date of such short sale for more than 6 months, any loss upon the closing of such short sale shall be considered as a loss upon the sale or exchange of a capital asset held for more than 6 months (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding the provisions of subsection (g) (2)).

(S) Rules for application of subsection.

(A) The provisions of paragraph (1) (A) or (2) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable paragraph.

(B) For the purposes of this subsection—

(i) the term “property” includes only stocks and securities (including stocks and securities dealt with on a “when issued” basis), and commodity futures, which are capital assets in the hands of the taxpayer;

(ii) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in one calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month; and

(iii) in a case of a short sale of property by an individual, the term “taxpayer”, in the application of this paragraph and paragraphs (1) and (2), shall be read as “taxpayer or his spouse”; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer.

(C) Where the taxpayer enters into two commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to ²him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, this subsection shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(m) Collapsible corporations.

(1) **Treatment of gain to shareholders.** Gain from the sale or exchange (whether in liquidation or otherwise) of stock of a collapsible corporation, to the extent that it would be considered (but for the provisions of this subsection) as gain from the sale or exchange of a capital asset held for more than 6 months, shall, except as provided in paragraph (3), be considered as gain from the sale or exchange of property which is not a capital asset.

(2) Definitions.

(A) For the purposes of this subsection, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in subsection (a) (1) (A), or for the holding of stock in a corporation so formed or availed of, with a view to—

(i) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the net income to be derived from such property, and

(ii) the realization by such shareholders of gain attributable to such property.

(B) For the purposes of subparagraph (A), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if—

(i) it engaged in the manufacture, construction, or production of such property to any extent,

(ii) it holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(iii) it holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) Limitations on application of subsection. In the case of gain realized by a shareholder upon his stock in a collapsible corporation—

(A) this subsection shall not apply unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (a) (1) (A) or at any time thereafter, such shareholder (i) owned (or was considered as owning) more than 10 per centum in value of the outstanding stock of the corporation, or (ii) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than 10 per centum in value of the outstanding stock of the corporation;

(B) this subsection shall not apply to the gain recognized during a taxable year unless more than 70 per centum of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(C) this subsection shall not apply to gain realized after the expiration of three years following the completion of such manufacture, construction, production, or purchase.

For purposes of subparagraph (A), the ownership of stock shall be determined in accordance with the rules prescribed by paragraphs (1), (2), (3), (5), and (6) of section 503 (a), except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

(n) Dealers in Securities

(1) Capital gains. Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(A) the security was, prior to the expiration of the thirtieth day after the date of its acquisition or after the date of the enact-

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ment of the Revenue Act of 1951 (whichever is the later), clearly identified in the dealer's records as a security held for investment; and

(B) the security was not, at any time after the expiration of such thirtieth day, held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(2) **Ordinary losses.** Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in subsection (i) (relating to bond, etc., losses of banks), in no event be considered as loss from the sale or exchange of property which is not a capital asset if at any time after the thirtieth day following the date of the enactment of the Revenue Act of 1951 the security was clearly identified in the dealer's records as a security held for investment.

(3) **Definition of security.** For the purposes of this subsection the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(4) **Gain from sale of certain property between spouses or between an individual and a controlled corporation**

(1) **Treatment of gain as ordinary income.** In the case of a sale or exchange, directly or indirectly, of property described in paragraph

(2)—

(A) between a husband and wife; or

(B) between an individual and a corporation more than 80 per centum in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren;

any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(2) **Subsection applicable only to sales or exchanges of depreciable property.** This subsection shall apply only in the case of a sale or exchange of property by a transferor which in the hands of the transferee is property of a character which is subject to the allowance for depreciation provided in section 23 (l).

(p) **Taxability to employee of termination payments.** Amounts received from the assignment or release by an employee, after more than twenty years' employment, of all his rights to receive, after termination of his employment and for a period of not less than five years (or for a period ending with his death), a percentage of future profits or receipts of his employer shall be considered an amount received from the sale or exchange of a capital asset held for more than six months, if such rights were included in the terms of the employment of such employee, for not less than twelve years, and if the total of the amounts received for such assignment or release are received in one taxable year and after the termination of such employment. 53 Stat. 50, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 212(a), (b), 214(c), 53 Stat. 869, 873; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 115(b), 55 Stat. 698; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 150(a-d), 151(a, b), (c) (1), 152, 56 Stat. 844-847; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 127(a, b), 58 Stat. 46, 47; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 8(d), 58 Stat. 236; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 210(a), (b), 211(a), 212(a), 216(c), Title III, pt. I, § 301(c) (2), (3), 64 Stat. 932-934, 941, 953; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 123, Title III, §§ 318(b) (4), 322(a) (2), (b),

(c) (2), (3), 323(a), 324, 325(a-c), 326(a), (b), 327, 328(a), 329(a), 65 Stat. 497.

1 So in original. Probably should read "or".

2 Second word "to" probably should be omitted.

Historical Note

References in Text. Date of enactment of Revenue Act of 1950, referred to in subsec. (l), was Sept. 23, 1950.

Date of enactment of Revenue Act of 1951, referred to in subsec. (n), was Oct. 20, 1951.

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 322(c) (2), which substituted "gross income" for "net income" in paragraphs (2) and (4).

Subsec. (b) amended by Act Oct. 20, 1951, § 322(a) (2), to allow a deduction from gross income equal to 50 percent of the amount by which the taxpayer's net long-term gain exceeds his net short-term loss.

Subsec. (c) (1) amended by Act Oct. 20, 1951, § 123, which struck out former second paragraph and inserted subparagraphs (A)-(C).

Subsec. (c) (2) amended by Act Oct. 20, 1951, § 322(b), to conform the computation of the alternate tax to the new treatment of capital gains and losses.

Subsec. (h) (7) added by Act Oct. 20, 1951, § 318(b) (4).

Subsec. (j) (1) amended by Act Oct. 20, 1951, §§ 323(a) (1), 324, 325(a), which inserted "or coal" following "timber" in second sentence, added at end of second sentence, "and unharvested crops to which paragraph (3) is applicable", and added third and fourth sentences.

Subsec. (j) (2) (A) amended by Act Oct. 20, 1951, § 322(c) (3), which substituted "gross income * * * shall not apply" in lieu of "net income, except that subsections (b) and (d) shall not apply".

Subsec. (j) (3) added by Act Oct. 20, 1951, § 323(a) (2).

Subsec. (k) catchline amended to include coal by Act Oct. 20, 1951, § 325(c).

Subsec. (k) (2) amended by Act Oct. 20, 1951, § 325(b), to make it applicable to coal.

Subsec. (m) (2) amended by Act Oct. 20, 1951, § 326(a), to redefine collapsible corporations.

Subsec. (m) (3) (A-C) amended by Act Oct. 20, 1951, § 326(b), to bring within the scope of this subsection the purchase of property described in subsection (a) (1) (A).

Subsecs. (n)-(p) added by Act Oct. 20, 1951, §§ 327, 328(a), 329(a), respectively.

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 210(a), to redefine the term "capital assets".

Subsec. (c) amended by Act Sept. 23, 1950, § 301(c) (2), (3), which inserted "421" preceding "and 500" in par. (1),

and inserted "(or, in the case of certain tax-exempt trusts, in lieu of the tax imposed by section 421)" following "sections 11 and 12" in par. (2).

Subsec. (g) amended by Act Sept. 23, 1950, § 216(c), which struck out period at end of par. (2) and inserted in lieu thereof a semicolon and the word "and", and added par. (3).

Subsec. (j) amended by Act Sept. 23, 1950, § 210(b), which added clause "C".

Subsec. (l) and (m) added by Act Sept. 23, 1950, §§ 211(a), 212(a).

1944 Amendments. Subsec. (a) (10) (B) amended by Act May 29, 1944, which added last sentence beginning "If the tax".

Subsec. (d) (2) amended by Act May 29, 1944, which added last sentence beginning "If the tax".

Subsec. (j) (1) amended by Act Feb. 25, 1944, which added last sentence.

Subsec. (k) added by Act Feb. 25, 1944.

1942 Amendment. Subsecs. (a) (1-6), (b-e), and (h) (1) amended and subsecs. (a) (10, 11), (b) (6) and (l, j) added by Act Oct. 21, 1942.

In subsec. (a), words "18 months" were struck out wherever occurring therein and "6 months" inserted in lieu thereof, and, in subsec. (a) (1), words "or real property used in the trade or business of the taxpayer" were inserted at the end thereof.

Subsec. (a) (6), prior to Act Oct. 21, 1942, read as follows: "(6) Net short-term capital gain. The term 'net short-term capital gain' means the excess of short-term capital gains for the taxable year over the sum of (A) short-term capital losses for the taxable year, plus (B) the net short-term capital loss of the preceding taxable year (if beginning after December 31, 1937), to the extent brought forward to the taxable year under subsection (e)."

Subsecs. (b-e) prior to Act Oct. 21, 1942, read as follows:

"(b) Percentage taken into account. In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

"100 per centum if the capital asset has been held for not more than 18 months;

"66 $\frac{2}{3}$ per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

"50 per centum if the capital asset has been held for more than 24 months.

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"(c) **Alternative taxes.**—(1) In case of net long-term capital gain. If for any taxable year a taxpayer (other than a corporation) derives a net long-term capital gain, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

"A partial tax shall first be computed upon the net income reduced by the amount of the net long-term capital gain, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax plus 30 per centum of the net long-term capital gain.

"(2) In case of net long-term capital loss. If for any taxable year a taxpayer (other than a corporation) sustains a net long-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is greater than the tax imposed by such sections:

"A partial tax shall first be computed upon the net income increased by the amount of the net long-term capital loss, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax minus 30 per centum of the net long-term capital loss.

"(d) **Limitation on capital losses.** Long-term capital losses shall be allowed, but short-term capital losses shall be allowed only to the extent of short-term capital gains.

"(e) **Net short-term capital loss carry-over.** If any taxpayer sustains in any taxable year, beginning after December 31, 1937, in the case of a taxpayer other than a corporation, or beginning after December 31, 1939, in the case of a corporation, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year."

In subsec. (h), par. (6) added, and par. (1) amended by Act Oct. 21, 1942 by inserting, at the end thereof, a new sentence, as follows: "For the purposes of this paragraph, an involuntary conversion described in section 112(f) shall be considered an exchange of the property converted for the property acquired."

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, which added the provision "or an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue".

1939 Amendment. Subsecs. (d) and (e) amended by Act June 29, 1939.

Prior to said amendment subsections read as follows:

"(d) **Limitation on capital losses.**—

"(1) **Corporations.** In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States (including laws relating to the District of Columbia) or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.

"(2) **Other taxpayers.** In the case of a taxpayer other than a corporation, short-term capital losses shall be allowed only to the extent of short-term capital gains.

"(e) **Net short-term capital loss carry-over.** If any taxpayer (other than a corporation) sustains in any taxable year beginning after December 31, 1937, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year."

Subsec. (h) (5) added by Act June 29, 1939.

Effective Date of 1951 Amendment. Amendments of subsecs. (a) (2), (4) (b), (c) (2) (A, B), (j) (2) (A) made applicable only with respect to taxable years beginning on or after Oct. 20, 1951, by section 322(d) of Act Oct. 20, 1951. Amendment of second sentence of subsec. (j) (1) and addition of subsec. (j) (3) by section 323(a) of Act Oct. 20, 1951, made applicable only with respect to sales, exchanges, and conversions occurring in taxable years beginning after Dec. 31, 1950, by section 323(c) of Act Oct. 20, 1951. Amendment of second sentence of subsec. (j) (1) by section 325(a) of said Act Oct. 20, 1951, made applicable only with respect to taxable years ending Dec. 31, 1950, (whether the contract was made on, before, or after such date), but shall apply only with respect to amounts received or accrued after such date, by section 325(f) of said Act Oct. 20, 1951. Insertion of third sentence in subsec. (j) (1) made applicable with respect to taxable years beginning after Dec. 31, 1941, except that the extension of the holding period from 6 to 12 months shall be applicable only with respect to taxable

years beginning after Dec. 31, 1950, and the insertion of this fourth sentence in subsec. (j) (1) made applicable only with respect to taxable years beginning after Dec. 31, 1950, by section 324 of Act Oct. 20, 1951. Amendment of subsec. (k) catchline, and subsec. (k) (2) made applicable only with respect to taxable years ending after Dec. 31, 1950 (whether the contract was made on, before, or after such date), but shall apply only with respect to amounts received or accrued after such date, by section 325(f) of Act Oct. 20, 1951. Amendment of subsec. (m) (2), (3) made applicable to taxable years ending after Aug. 31, 1951, but shall be applicable only with respect to gains realized after such date, by section 326(c) of Act Oct. 20, 1951. Addition of subsec. (n) made effective with respect to sales or exchanges made after the expiration of 30 days after Oct. 20, 1951, by section 327 of Act Oct. 20, 1951. Addition of subsec. (n) made applicable with respect to taxable years ending after Apr. 30, 1951, but shall apply only with respect to sales or exchanges made after May 3, 1951, by section 328(b) of Act Oct. 20, 1951. Addition of subsec. (p) made applicable with respect to taxable years beginning after Dec. 31, 1950, by section 329(b) of Act Oct. 20, 1951. Addition of subsec. (h) (7) made applicable to taxable years ending after Dec. 31, 1950, by section 318(c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendment. Section 210(c) of Act Sept. 23, 1950, provided that amendments of subssecs. (a) (1) and (j) should be applicable with respect to taxable years beginning after Sept. 23, 1950.

Section 211(b) of Act Sept. 23, 1950, provided that the addition of subsec. (l) should be applicable only with respect to taxable years beginning after Sept. 23, 1950.

Section 212(b) of Act Sept. 23, 1950, provided that: "The amendment made by this section shall be applicable to taxable years ending after December 31, 1949, but shall apply only with respect to gains realized after such date. The determination of the tax treatment of gains realized prior to January 1, 1950, shall be made as if this section had not been enacted and without inferences drawn from the fact that the amendment made by this section is not expressly made applicable to gains realized prior to such date and without inferences drawn from the limitations contained in section 117(m), added to the Internal Revenue Code by this section [subsec. (m) of this section]."

Amendment of subsec. (c) (1), (2), by Act Sept. 23, 1950, as applicable only with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Amendment of subsec. (g) (2), (3) as applicable with respect to taxable years ending after Dec. 31, 1949, see note set out under section 124A of I.R.C.1939.

Effective Date of 1944 Amendments. Amendment of subssecs. (a) (10) (B) and

(d) (2) by Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Section 127(c) of Act Feb. 25, 1944, provided as follows: "A provision having the effect of section 117(k) (2) of the Internal Revenue Code [1939] inserted by the amendment made by subsection (a) shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after February 28, 1913. The amendment made by subsection (b) [to subsec. (j) (1)] shall be effective as if it were made by section 151 of the Revenue Act of 1942."

Effective Date of 1942 Amendments. Amendments of subssecs. (a) (1-6, 10, 11), (b-e), (h) (6), (i, j) by Act Oct. 21, 1942, §§ 150(a-d), 151(a, b), 152, were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment of subsec. (h) (1) by Act Oct. 21, 1942, § 151(c) (1), was made applicable to taxable years beginning after Dec. 31, 1938, by section 151(c) (2) thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, § 115(b), which amended subsec. (a) (1) of this section, was made applicable with respect to taxable years ending after Feb. 28, 1941, by section 115(c) thereof.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendments of subssecs. (d) and (e) were made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Amendment adding subsec. (h) (5) made applicable to taxable years beginning after Dec. 31, 1938 by section 214 (d) of Act June 29, 1939.

Determination of Amount of Carryover. Section 322(d) of Act Oct. 20, 1951, provided in part that: "In determining under section 117(e) of the Internal Revenue Code [subsec. (e) of this section] the amount of the carryover to a taxable year beginning on or after such date, of the capital loss for a taxable year beginning before such date, such amendments shall not affect the computation of the amount of the net capital loss or of the net capital gain for any taxable year beginning before such date"

Determination of Tax Treatment of Gains Realized Prior to Sept. 1, 1951. Section 326(c) of Act Oct. 20, 1951, provided in part that: "The determination of the tax treatment of gains realized prior to September 1, 1951, shall be made as if this section had not been enacted and without inferences drawn from the fact that the amendments to section 117 (m) made by this section are not expressly made applicable to gains realized prior to September 1, 1951, and without inferences drawn from the limitations contained in section 117(m), as amended by this section."

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Net Losses. Section 117 of the Revenue Act of 1932, Act June 6, 1932, c. 209, § 117, 47 Stat. 207, was repealed by Act June 16, 1933, c. 90, Title II, § 218(a), 48 Stat. 209, eff. January 1, 1933. Provisions similar to the repealed section were not incorporated into the Internal Revenue Title [1939]. Prior similar provisions were contained in Acts May 29, 1928, c. 852, § 117, 45 Stat. 825; June 2, 1926, c. 27, § 206, 44 Stat. 17; June 2, 1924, c. 234, § 206, 43 Stat. 260; Nov. 23, 1921, c. 136, Title II, § 204, 42 Stat. 231; Feb. 24, 1919, c. 18, Title II, § 204, 40 Stat. 1060.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:11 p m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.
1944—Feb. 25, 1944, 12:49 p m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.
1942—Oct. 21, 1942, 4:30 p m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.
1941—Sept. 20, 1941, 12:15 p m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 23, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 118. Loss from wash sales of stock or securities

(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 23(e) (2); nor shall such deduction be allowed under section 23(f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business.

(b) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. 53 Stat. 53.

§ 119. Income from sources within United States

(a) **Gross income from sources in United States.** The following items of gross income shall be treated as income from sources within the United States:

(1) **Interest.** Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States, or

(B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the

gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, or

(C) income derived by a foreign central bank of issue from bankers' acceptances;

(2) Dividends. The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 251, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States to the extent exceeding the amount which is 100/85ths of the amount of the credit allowable under section 26(b) in respect of such dividends;

(3) Personal services. Compensation for labor or personal services performed in the United States, but in the case of a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year, compensation received by such an individual (if such compensation does not exceed \$3,000 in the aggregate) for labor or services performed as an employee of or under a contract with a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, shall not be deemed to be income from sources within the United States;

(4) Rentals and royalties. Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

(5) Sale of real property. Gains, profits, and income from the sale of real property located in the United States.

(6) Sale of personal property

For gains, profits, and income from the sale of personal property, see subsection (e).

(b) Net income from sources in United States. From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

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(c) **Gross income from sources without United States.** The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

(d) **Net income from sources without United States.** From the items of gross income specified in subsection (c) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) **Income from sources partly within and partly without United States.** Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (c) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from—

(1) transportation or other services rendered partly within and partly without the United States, or

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits, and income derived from the purchase of personal property within a posses-

sion of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) **Definitions.** As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged". 53 Stat. 53, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 160(c), 56 Stat. 861; Oct. 21, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 311(b), 65 Stat. 488.

Historical Note

1951 Amendment. Subsec. (a) (2) (B) amended by Act Oct. 20, 1951, § 311(b), to insert before semicolon "to the extent * * * such dividends".

1942 Amendment. Subsec. (a) (1) (A) struck out the words "and not having an office or place of business therein" following the words "not engaged in business within the United States".

Effective Date of 1951 Amendment. Amendment of subsec. (a) (2) (B) made applicable only with respect to taxable years beginning after Dec. 30, 1950, by section 311(c) of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 615 of Act Oct. 20, 1951 provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 803.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

§ 120. Unlimited deduction for charitable and other contributions

In the case of an individual if in the taxable year and in each of the ten preceding taxable years the amount of the contributions or gifts described in section 23(o) (or corresponding provisions of prior revenue Acts) plus the amount of income (determined without regard to subchapter E, relating to tax on self-employment income), war-profits, or excess-profits taxes paid during such year in respect of such year or preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 20 per centum limit imposed by section 23(o) shall not be applicable. 53 Stat. 56, amended Aug. 28, 1950, c. 809, Title II, § 208(d) (6), 64 Stat. 545; Jan. 11, 1951, c. 1226, § 1, 64 Stat. 1244; July 8, 1952, c. 588, § 4(b), 66 Stat. 443.

Historical Note

1952 Amendment. Act July 8, 1952, amended section to insert "20 per centum" in lieu of "15 per centum" due to the amendment of section 23(o) of I.R.C. 1939.

1951 Amendment. Act Jan. 11, 1951, amended section by substituting "in respect of such year or preceding taxable years" in lieu of "in respect of preceding taxable years."

1950 Amendment. Act Aug. 28, 1950, amended section by inserting "(determined * * * self-employment income)" immediately following "amount of income".

Effective Date of 1952 Amendment. Section 4(c) of Act July 8, 1952, provided in part that the amendment of subsec. (o) should apply only with respect to taxable years beginning after Dec. 31, 1951.

Effective Date of 1951 Amendment. Section 2 of Act Jan. 11, 1951, provided that the amendment of this section by section 1 of said Act Jan. 11, 1951, should be applicable to taxable years beginning after Dec. 31, 1942.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see

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volumes "Title 26—Internal Revenue Acts".

see 1951 U.S.Code Cong.Service, p. 4326. See, also, Act Aug. 28, 1950, 1950 U.S. Code Cong Service, p. 3287.

Legislative History: For legislative history and purpose of Act Jan. 11, 1951,

§ 121. Deduction of dividends paid on certain preferred stock of certain corporations

In computing the net income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall be deducted from the basic surtax credit otherwise computed under section 27(b). 53 Stat. 56.

Historical Note

Exception as to Transfer of Functions. Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Sec-

retary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 122. Net operating loss deduction

(a) **Definition of net operating loss.** As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d).

(b) **Amount of carry-back and carry-over.**

(1) **Net operating loss carry-back.**

(A) **Loss for taxable year beginning before 1950.** If for any taxable year beginning after December 31, 1941, and before January 1, 1950, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss and without regard to any reduction specified in subsection (c).

(B) **Loss for taxable year beginning after 1949.** If for any taxable year beginning after December 31, 1949, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for the preceding taxable year.

(2) **Net operating loss carry-over.**

(A) **Loss for taxable year beginning before 1948.** Except as provided in subparagraphs (D) and (E), if for any taxable year beginning before January 1, 1948, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding

taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss, without regard to any net operating loss carry-back, and without regard to any reduction specified in subsection (c).

For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941, shall be reduced by the sum of the net income for each of the two preceding taxable years computed—

(iii) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(iv) by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year, and without regard to any reduction specified in subsection (c).

(B) Loss for taxable year beginning after 1949. If for any taxable year beginning after December 31, 1949, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the five succeeding taxable years, except that the carry-over in the case of each such succeeding taxable year (other than the first succeeding taxable year) shall be the excess, if any, of the amount of such net operating loss over the sum of the net income for each of the intervening years computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for each intervening taxable year, without regard to such net operating loss or to the net operating loss for any succeeding taxable year and without regard to any reduction specified in subsection (c).

For the purpose of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1949, shall be reduced by the amount, if any, of the net income for the preceding taxable year computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for such preceding taxable year without regard to such net operating loss and without regard to any reduction specified in subsection (c).

(C) Loss for taxable year beginning after December 31, 1947, and before January 1, 1950. If for any taxable year beginning after December 31, 1947, and before January 1, 1950, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the three succeeding taxable years, except that the carry-over in the case of each such succeeding taxable year (other than the first succeeding taxable year) shall be the excess, if any, of the amount of such net operating loss over the sum of the net income for each of the intervening years computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for each intervening taxable year without regard to such net operating loss or to

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the net operating loss for any succeeding taxable year and without regard to any reduction specified in subsection (c).

For the purpose of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1947, and before January 1, 1950, shall be reduced by the sum of the net income for each of the two preceding taxable years computed—

(iii) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(iv) by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year, and without regard to any reduction specified in subsection (c).

(D) Loss for taxable year beginning after December 31, 1946, and before January 1, 1948, in the case of a corporation which commenced business after December 31, 1945. If for any taxable year beginning after December 31, 1946, and before January 1, 1948, a corporation which commenced business after December 31, 1945, has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the three succeeding taxable years, except that the carry-over in the case of each such succeeding taxable year (other than the first succeeding taxable year) shall be the excess, if any, of the amount of such net operating loss over the sum of the net income for each of the intervening years computed—

(i) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(ii) by determining the net operating loss deduction for each intervening taxable year without regard to such net operating loss or to the net operating loss for any succeeding taxable year, and without regard to any reduction specified in subsection (c).

For the purpose of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1946, shall be reduced by the sum of the net income for each of the two preceding taxable years computed—

(iii) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and

(iv) by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year, and without regard to any reduction specified in subsection (c).

(E) Loss for taxable years of corporations beginning in 1947 and ending in 1948. If a corporation (other than a corporation which commenced business after December 31, 1945) has a net operating loss for a taxable year beginning in 1947 and ending in 1948, subparagraph (C) shall apply as if the taxable year began after December 31, 1947; except that the net operating loss carry-over for the third succeeding taxable year shall not exceed that amount which bears the same ratio to the net operating loss as the number of days in the taxable year after December 31, 1947, bears to the total number of days in the taxable year.

(F) Loss in case of corporations whose first taxable year began in 1949 and ended in 1950. If the first taxable year of a corporation began in 1949 and ended in 1950, and if the corporation had a net operating loss for such first taxable year, there shall be a net operating loss carry-over for the fourth and fifth succeeding taxable years. The amount of such carry-over shall be determined in accordance with the first sentence of subparagraph (B); except that—

(i) such carry-over for the fourth succeeding taxable year shall not exceed so much of such net operating loss as is allocable to 1950, and

(ii) such carry-over for the fifth succeeding taxable year shall not exceed the amount by which the carry-over for the fourth succeeding taxable year (as limited by clause (i) of this sentence) exceeds the net income for the fourth succeeding taxable year computed as provided in clauses (i) and (ii) of the first sentence of subparagraph (B).

For the purposes of the preceding sentence, the portion of the net operating loss which is allocable to 1950 shall be an amount which bears the same ratio to such loss as the number of days in the taxable year after December 31, 1949, bears to the total number of days in the taxable year.

(d) **Exceptions, additions, and limitations.** The exceptions, additions, and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114(b) (2), (3), or (4);

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

(3) No net operating loss deduction shall be allowed;

(4) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from such sales or exchanges. The deduction provided in section 23 (ee) shall not be allowed.

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions, additions, and limitations specified in paragraphs (1) to (4) of this subsection. This paragraph shall not apply with respect to deductions allowable for losses sustained after December 31, 1950, in respect of property, if the losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(6) Suspended.

(e) **No carry-back to year prior to 1941.** As used in this section, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(b), 53 Stat. 867, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 105 (e) (3), 150(e), 153(a-c), 56 Stat. 807, 844, 847, 848; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(g) (2), Title II, § 215 (a), 64 Stat. 918, 937; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304 (e), 64 Stat. 1220; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 322(c) (4), 330(a), (b), 344(a), 65 Stat. 500, 505, 517; Aug. 15, 1953, c. 512, Title II, § 205(a) (1), (2), 67 Stat. 619.

Historical Note

1953 Amendment. Subsec. (b) (2) (A) amended by Act Aug. 15, 1953, § 205(a) (2), which substituted the words "subparagraphs (D) and (E)" for "subparagraph (D)".

Subsec. (b) (2) amended by Act Aug. 15, 1953, § 205(a) (1), which added subparagraphs (E) and (F).

1951 Amendments. Subsec. (b) (2) (A) amended by Act Oct. 20, 1951, § 330(a),

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to substitute "January 1, 1948" in lieu of "January 1, 1950."

Subsec. (b) (2) (C), (D) added by Act Oct. 20, 1951, § 330(b).

Subsec. (d) (4) amended by Act Oct. 20, 1951, § 322(c) (4), to provide that the deduction provided for in section 23 (ee) shall not be allowed.

Subsec. (d) (5) amended by Act Oct. 20, 1951, § 344(a), to add last sentence.

Subsec. (d) (6) suspended with respect to any taxable year ending after June 30, 1950, by Act Jan. 3, 1951.

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, to provide that the net operating loss for any taxable year beginning after Dec. 31, 1949, may be carried back to the preceding taxable year only, and to allow such net operating loss (to the extent it is not absorbed as a carry-back) also may be carried forward to the five succeeding taxable years.

Subsec. (c) amended by Act Sept. 23, 1950, which substituted "without the credits provided in section 26(h) and (i)" in lieu of "without the credits provided in section 26(e)".

1942 Amendment. Subsecs. (a-c), (d) (opening par., and pars. 4, 5), (e) amended and subsec. (d) (6) added by Act Oct. 21, 1942.

Effective Date of 1953 Amendment. Section 205(a) (3) of Act Aug. 15, 1953 provided that: "The amendment [to subsec. (b) (2) (A)] made by paragraph (2), and subparagraph (E) of section 122(b) (2) of the Internal Revenue Code [1939] as added by paragraph (1), shall apply with respect to taxable years ending after December 31, 1947. Subparagraph (F) of section 122(b) (2) of the Internal Revenue Code [1939] as added by paragraph (1) shall apply with respect to taxable years ending after December 31, 1949."

Effective Date of 1951 Amendments. Amendment of subsec. (b) (2) (A) and addition of subsec. (b) (2) (C), (D) made applicable in computing the net operating loss deduction for taxable years beginning after Dec. 31, 1951, by section 330(c) of Act Oct. 20, 1951.

Amendment of subsec. (d) (4) made applicable only with respect to taxable years beginning on or after Oct. 20, 1951, by section 322(d) of Act Oct. 20, 1951.

Amendment of subsec. (d) (5) made applicable in computing the net operating loss deduction for taxable years ending after Dec. 31, 1948, by section 344(b), of Act Oct. 20, 1951. Addition of last

sentence of subsec. (d) (5) made effective as if it had been enacted as a part of this section.

Amendment of section by Act Jan. 3, 1951, as applicable with respect to taxable years ending after June 30, 1950, see note set out under section 114 of I.R.C. 1939.

Effective Date of 1950 Amendments. Section 215(b) of Act Sept. 23, 1950, provided that the amendment of subsec. (b) should be applicable in computing the net operating loss deduction for taxable years beginning after Dec. 31, 1947.

Amendment of subsec. (c) by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1950, see note set out under section 13 of I.R.C. 1939.

Effective Date of 1942 Amendment. Amendments of subsecs. (a) and (d) by Act Oct. 21, 1942, §§ 105(e), 150(e) were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendments of subsecs. (b), (c) and (e) by Act Oct. 21, 1942, § 153(a-c), were made applicable to taxable years beginning after Dec. 31, 1940, by section 153(e) thereof.

Carry-Over to Reorganized Railroads. See Act July 15, 1947, c. 249, 61 Stat. 324, as amended, eff. July 15, 1947, by Act Aug. 15, 1953, c. 512, § 205(b), 67 Stat. 619.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 21, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953 see 1953 U.S. Code Cong. and Adm. News, p. 2423. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Jan. 3, 1951, 1950 U.S. Code Cong. Service, p. 4027; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053.

§ 123. Commodity credit loans

(a) Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subsection (a) for any taxable year beginning after December 31, 1938, then the method of computing income so adopted shall be adhered to with respect to all

subsequent taxable years unless with the approval of the Commissioner a change to a different method is authorized.

(c) The election provided for in subsection (a) with respect to taxable years beginning after December 31, 1938, and before January 1, 1942, may be exercised by the taxpayer at, or at any time prior to, the time prescribed for the filing of the taxpayer's return for the taxable year of the taxpayer beginning in 1942, or if there is more than one taxable year of the taxpayer beginning in 1942, for the last taxable year so beginning, provided the records of the taxpayer are sufficient to permit an accurate computation of income for such years, and the taxpayer consents in writing to the assessment, within such period as may be agreed upon, of any deficiency for such years, even though the statutory period for the assessment of any such deficiency had expired prior to the filing of such consent. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 223(a), 53 Stat. 879, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 154(a), 56 Stat. 848.

Historical Note

1942 Amendment. Subsec. (c) added by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1939 Amendment. Section 223(c) of Act June 29, 1939 provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1938.

Retroactive Operation. Act June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 223(d) and (e), 53 Stat. 879, provided as follows:

"(d) **Retroactive application.**—The provisions of subsection (a) [adding section 123] shall be retroactively applied in computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, if—

"(1) The taxpayer elects in writing (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) within one year from the date of the enactment of this Act to treat such loans as income for such year, and

"(2) The records of the taxpayer are sufficient to permit an accurate computation of income for such year, and

"(3) The taxpayer consents in writing to the assessment, within such period as may be agreed upon, of any deficiency

for such year, even though the statutory period for the assessment of any such deficiency had expired prior to the filing of such consent.

"Any tax overpaid for any such year shall be credited or refunded, subject to the statutory period of limitation properly applicable thereto.

"(e) **Adjustment of Basis for Prior Years.**—In computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, the basis, for determining gain or loss from the sale or other disposition of any property, pledged to the Commodity Credit Corporation as security on a loan obtained therefrom, shall be adjusted for the amount of such loan to the extent it was considered as income and included in gross income for the year in which received, and for the amount of any deficiency on such loan with respect to which the taxpayer was relieved from liability."

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 124. Amortization deduction

(a) **General rule.** Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any emergency facility (as defined in subsection (e)), based on a period of sixty months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis

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at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (g) of this section, be in lieu of the deduction with respect to such facility for such month provided by section 23(l), relating to exhaustion, wear and tear, and obsolescence. The sixty-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

(b) **Election of amortization.** The election of the taxpayer to take the amortization deduction and to begin the sixty-month period with the month following the month in which the facility was completed or acquired shall (except as provided in subsection (d) (3)) be made only by a statement to that effect in its return for the taxable year in which the facility was completed or acquired. Its election to take the amortization deduction and to begin such period with the taxable year succeeding such year shall be made only by a statement to that effect in its return for such succeeding taxable year. In the case of an emergency facility completed or acquired (1) after December 31, 1939, and before June 11, 1940, by a corporation, or (2) after December 31, 1939, and before January 1, 1942, by a person other than a corporation, the taxpayer's election to take the amortization deduction and to begin such period with either the month following the month in which the facility was completed or acquired or with the succeeding taxable year shall be made only by a statement in writing to that effect to the Commissioner and shall be made before the expiration of six months after the date of enactment of the Revenue Act of 1942.

(c) **Termination of amortization deduction.** A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deductions with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Commissioner before the beginning of such month. The deduction provided under section 23(l) shall be allowed, beginning with the first month as to which the amortization deduction is not applicable, and the taxpayer shall not (except as provided in subsection (d)) be entitled to any further amortization deductions with respect to such emergency facility.

(d) **Termination of amortization period.**

(1) If the President has proclaimed the ending of the emergency period (as defined in subsection (e)), or if the Secretary of War or the Secretary of the Navy has, in accordance with regulations prescribed by the President, certified to the Commissioner that an emergency facility ceased, on the date specified in the certificate, to be necessary in the interest of national defense during the emergency period, and if the date of such proclamation or the date specified in such certificate occurs within sixty months from the beginning of the amortization period with respect to such emergency facility, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period.

(2) If the date of the proclamation or the date specified in the certificate referred to in paragraph (1) of this subsection occurs within sixty months from the beginning of the amortization period

with respect to such emergency facility and after the beginning of the month which the taxpayer has previously fixed under subsection (c) for the taking, in lieu of the amortization deduction provided in this section, of the deduction allowed by section 23(1), the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period, and the termination of the amortization deduction under subsection (c) shall be disregarded.

(3) In the case of a taxpayer which has not elected, in the manner prescribed in subsection (b), to take an amortization deduction with respect to an emergency facility, if the date of the proclamation or the date specified in the certificate, referred to in paragraph (1) of this subsection, whichever is earlier, is before the expiration of sixty months from the last day of the month in which such emergency facility was completed or acquired, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) the amortization deduction provided in subsection (a), using an amortization period beginning with the month following the month in which the emergency facility was completed or acquired and ending as of the end of the month within which such proclamation was issued or within which occurred the date specified in such certificate, whichever is the earlier.

(4) The election provided in paragraph (1), (2), or (3) shall be made by filing with the Commissioner, in such manner, in such form, and within such time, as the Commissioner with the approval of the Secretary may by regulations prescribe, a statement of such election. When such election has been so made, then, under regulations prescribed by the Commissioner with the approval of the Secretary, the taxes for all taxable years, beginning with the taxable year in which the amortization period began, shall be computed in accordance with an amortization deduction computed in accordance with the method provided in subsection (a), but using (in lieu of the sixty-month period provided in such subsection) the amortization period specified in paragraph (1), (2), or (3), as the case may be.

(5) Recomputation of tax in case of election under this subsection. If the adjustment of the income or excess-profits tax liability for any taxable year necessary to give effect to paragraph (4) of this subsection is prevented (A) on the date of the certificate of the Secretary of War or the Secretary of the Navy or on the date of the President's proclamation, whichever is the basis of the taxpayer's election under this subsection, or (B) within one year from such date, by any provision of law (other than this paragraph and other than section 3761, relating to compromises), an adjustment of the tax liability shall nevertheless be made if in respect of such taxable year a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within one year after the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized in this paragraph shall be limited to the increase or decrease in the tax previously determined for such taxable year which results solely from the effect of paragraph (4) of this subsection, and such amount shall be as-

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sessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection, one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 3801(d). The amount to be assessed and collected under this paragraph in the same manner as if it were a deficiency, or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection.

(6) In the case of a taxpayer which has not elected, in the manner prescribed in subsection (b), to take an amortization deduction with respect to an emergency facility, if the date of the proclamation referred to in paragraph (1) of this subsection or the date specified in the certificate referred to in paragraph (1) of this subsection is before the completion of such emergency facility, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) the amortization deduction provided in subsection (a), using an amortization period beginning with the month in which the construction, reconstruction, erection, or installation of the emergency facility was begun and ending as of the end of the month within which such proclamation was issued or within which occurred the date specified in the certificate referred to in paragraph (1) of this subsection, whichever is the earlier.

(e) Definitions.

(1) **Emergency facility.** As used in this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1939, and with respect to which a certificate under subsection (f) has been made. For the purposes of this section, the part of any facility which was constructed, reconstructed, erected, or installed by any person after December 31, 1939, and not earlier than six months prior to the filing of an application for a certificate under subsection (f), and with respect to which part a certificate under subsection (f) has been made, shall be deemed to be an emergency facility, notwithstanding that the other part of such facility was constructed, reconstructed, erected, or installed earlier than six months prior to the filing of such application. For the purposes of this section, the part of any facility which was constructed, reconstructed, erected, or installed by a corporation after December 31, 1939, and before June 11, 1940, and with respect to which part a certificate under subsection (f) has been made, shall be deemed to be an emergency facility and to have been completed on June 10, 1940, notwithstanding that the entire facility was not completed until after June 10, 1940.

(2) **Emergency period.** As used in this section, the term "emergency period" means the period beginning January 1, 1940, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (f) have been made is no longer required in the interest of national defense.

(f) **Determination of adjusted basis of emergency facility.** In determining, for the purposes of subsection (a) or subsection (h), the adjusted basis of an emergency facility—

(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1939, as either the Secretary of War or the Secretary of the Navy has certified as necessary in the interest of national defense during the emergency period, which certification shall be under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, with the approval of the President.

(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility and shall be considered as an expenditure with respect to a new emergency facility; and

(3) The certificate provided for in paragraph (1) shall have no effect unless an application therefor is filed before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, or before December 1, 1941, whichever is later, except that—

(A) in the case of an emergency facility completed or acquired by a corporation after December 31, 1939, and before June 11, 1940, such certificate shall have no effect unless an application therefor is filed before the expiration of six months after the date of the enactment of the Revenue Act of 1942, and

(B) in the case of an emergency facility completed or acquired after December 31, 1939, by a person other than a corporation, such certificate shall have no effect unless an application therefor is filed before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, or before the expiration of six months after the date of the enactment of the Revenue Act of 1942, whichever is later.

In no event and notwithstanding any of the other provisions of this section, no amortization deduction shall be allowed in respect of any emergency facility for any taxable year—

(C) unless a certificate in respect thereof under paragraph (1) shall have been made (i) prior to the filing of the taxpayer's return for such taxable year, or prior to the making of an election pursuant to subsection (d) (3) or subsection (d) (6) of this section to take the amortization deduction, or (ii) before December 1, 1941, whichever is later; or

(D) in the case of an emergency facility completed or acquired by a corporation after December 31, 1939, and before June 11, 1940, unless a certificate in respect thereof under paragraph (1) shall have been made prior to the expiration of twelve months after the date of enactment of the Revenue Act of 1942; or

(E) in the case of an emergency facility completed or acquired after December 31, 1939, and before January 1, 1943, by a person other than a corporation, unless a certificate in respect thereof under paragraph (1) shall have been made (i),

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prior to the expiration of nine months after the last date upon which an application for such certificate may be filed, or (ii) prior to the expiration of twelve months after the date of enactment of the Revenue Act of 1942, whichever is later.

(g) **Depreciation deduction.** If the adjusted basis of the emergency facility computed without regard to subsection (f) of this section is in excess of the adjusted basis computed under such subsection, the deduction provided by section 23(l) shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis were an amount equal to the amount of such excess.

(h) **Payment by United States of unamortized cost of facility.** If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in this paragraph, then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be the amount so includible, but such deduction shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this paragraph shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by either the Secretary of War or the Secretary of the Navy as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

(A) A contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

(B) the taxpayer had reasonable grounds (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility the deduction allowable under section 23(l) on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 23(l) or this paragraph).

(i) **Life tenant and remainderman.** In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) **Application for Tentative Adjustment.** Any taxpayer who has filed a statement of election as prescribed in paragraph (4) of subsection (d) may, within ninety days from the date such statement is filed, or within ninety days from the date of enactment of this Act, whichever is the later, file an application for tentative adjustment with respect to the taxes for taxable years prior to the taxable year in which such application is filed which are to be computed as required by paragraph (4) of subsection (d) as the result of such election. Such application shall be verified in the manner prescribed by section 51 or section 52 in the case of a return of such taxpayer and shall be made in such manner and form as shall be

required by regulations prescribed by the Commissioner with the approval of the Secretary, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require, the recomputation of such taxes required by paragraph (4) of subsection (d) except that the tax for each taxable year to be recomputed shall be the tax for such year previously determined, ascertained in accordance with the method prescribed in section 3801(d). If an application under section 3780(a) for tentative carry-back adjustment has been previously filed, but such adjustment has not been previously determined, then for the purpose of subsection (j) and (k), the assessments, applications, credits, and refunds provided in section 3780(b) shall be considered as having been previously made upon the basis of such application under section 3780(a). Such recomputation of tax shall be made on the basis of the items on the basis of which the tax to be recomputed was determined. Such application shall also set forth the unpaid amount of each tax recomputed and such other information for the purpose of carrying out the provisions of subsections (j) and (k) as may be required by such regulations. An application under this subsection shall not constitute a claim for credit or refund.

(k) Allowance of Adjustment. Within a period of ninety days from the filing of an application under subsection (j), the Commissioner shall make, to the extent he deems practical in such period, a limited examination of the application for omissions and errors of computation, and shall determine the amount of the increase or decrease in each tax to which such application relates, on the basis of the application and the examination, except that the Commissioner may disallow, without further action, any application which he finds contains material omissions, or errors of computation which he deems cannot be corrected by him within such ninety-day period. Each increase shall be deemed determined as a deficiency and assessed, without regard to the restrictions on assessment in section 272. Each decrease shall be applied against any unpaid amount of the tax decreased, and any remainder shall be credited against the deficiencies (and interest or additions to the tax) assessed under this subsection, and any remainder shall, within such ninety-day period, be either credited against any other income, war profits, or excess profits tax, or instalment thereof, due from the taxpayer, or refunded to the taxpayer. The application, credit, or refund of a decrease determined under this subsection shall be deemed a credit or refund of an overpayment within the meaning of section 781(b). Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title III, § 302, 54 Stat. 999, amended Jan. 31, 1941, c. 3, §§ 1-3, 55 Stat. 4; Oct. 30, 1941, c. 464, §§ 1-3, 55 Stat. 757; Feb. 6, 1942, c. 41, 56 Stat. 50; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 155 (a-f), 56 Stat. 849-851; July 31, 1945, c. 340, § 7, 59 Stat. 525.

Historical Note

References in Text. Date of enactment of Revenue Act of 1942, referred to in subsecs (b) and (f) (3), was Oct. 21, 1942, 4:30 p. m., E.W.T.

Date of enactment of this Act, referred to in subsec. (j), meaning the Tax Adjustment Act of 1945, was July 31, 1945.

Section 781(b), referred to in subsec. (k), was repealed by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1945 Amendment. Subsecs. (j) and (k) added by Act July 31, 1945.

1942 Amendment. Subsecs. (a, b), (d) (3), (e), (f) (1, 3) amended and subsecs. (d) (6) and (l) added by Act Oct. 21, 1942.

Former subsec. (l), which related to protection of the United States with reference to use and disposition of emergency facilities, repealed by Joint Res. Feb. 6, 1942.

1941 Amendments. Subsecs. (f) (1, 3) and (l) amended by Joint Res. Oct. 30, 1941, §§ 1-3, respectively, and Joint Res. Jan. 31, 1941, §§ 1-3, respectively.

Change of Name. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by Act July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

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Effective Date of 1942 Amendment. Act Oct. 21, 1942, amending subsecs. (a), (b), (d) (3, 6), (e), (f) (1, 3), and (i) of this section was made effective as of Oct. 8, 1940, by section 155(i) thereof.

Effective Date of 1941 Amendment. Section 4 of Joint Res. Jan. 31, 1941, provided as follows: "The amendments made by this joint resolution to section 124 of the Internal Revenue Code [1939] shall be applicable as if they were a part of such section on the date of the enactment of the Second Revenue Act of 1940 (Oct. 8, 1940, 11 p. m., E.S.T.)." Repeated in section 4 of Joint Res. Oct. 30, 1941.

Short Title. Section 1 of Act July 31, 1945, provided: "That this Act [sections 124, 141, 276, 292, 294, 322, 710, 729, 780, 781, 783, 784, 3771, 3777, 3779-3781 of I.R.C. 1939] may be cited as the 'Tax Adjustment Act of 1945'."

Overpayments. Section 155(j) of Act Oct. 21, 1942, provided as follows:

"(j) Where a tax paid under Chapter 1, Chapter 2B, or [former] Chapter 2E of the Internal Revenue Code [1939] is in excess of the tax which would have been paid had section 124 of the Internal Revenue Code, as previously amended, been enacted on October 8, 1940, to read as amended by this section, then credit or refund of such excess may be made without interest, in accordance with the provisions of law applicable in the case of erroneous or illegal assessment or collection or overpayment of the tax."

Amortization Deductions on Facilities Used in World War I. See Acts Feb. 24, 1919, c. 18, § 234 (a) (8), 40 Stat. 1078; Nov. 23, 1921, c. 136, § 234 (a) (8), 42 Stat. 255.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would

be contrary to any treaty obligation of the United States."

Ex.Ord.No.9486. Ex.Ord.No.9486, Oct. 2, 1944, 9 F.R. 11987, provided for the transfer of functions with respect to non-necessity certificates from the Secretaries of War and Navy to War Production Board Chairman. See Ex.Ord.No.10200, set out as a note under section 2153 of Appendix to Title 50, War and National Defense.

Ex.Ord.No.9487. Ex.Ord.No.9487, Oct. 2, 1944, 9 F.R. 11987, as corrected Ex.Ord. No.9487, Oct. 13, 1944, 9 F.R. 12403, and amended Ex.Ord.No.9676, Jan. 15, 1946, 11 F.R. 627, prescribed regulations governing issuance of non-necessity certificates under this section and setting forth Feb. 15, 1946 as a terminal date for filing application for such certificates. See Ex.Ord.No.10200, set out as a note under section 2153 of Appendix to Title 50, War and National Defense.

Ex.Ord.No.9490. Ex.Ord.No.9490, Oct. 21, 1944, 9 F.R. 12707, provided for the transfer of functions of the Secretaries of War and Navy under this section to the chairman of the War Production Board. See Ex.Ord.No.10200, set out as a note under section 2153 of Appendix to Title 50, War and National Defense.

Ex.Ord.No.9491. Ex.Ord.No.9491, Oct. 21, 1944, 9 F.R. 12707, as amended by Ex.Ord.No.9802, Nov. 13, 1946, 11 F.R. 13457, prescribed regulations concerning the issuance of payment certificates under this section and setting forth Dec. 31, 1946 as a terminal date for filing application for such certificates. See Ex.Ord.No.10200, set out as a note under section 2153 of Appendix to Title 50, War and National Defense.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 124A. Amortization deduction

(a) **General rule.** Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any emergency facility (as defined in subsection (d)), based on a period of sixty months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (f) of this section, be in lieu of the deduction with respect to such facility for such month provided by section 23(l), relating to exhaustion, wear and tear, and obsolescence. The sixty-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

(b) **Election of amortization.** The election of the taxpayer to take the amortization deduction and to begin the sixty-month period with the month following the month in which the facility was completed or acquired, or with the taxable year succeeding the taxable year in which such facility was completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

(c) **Termination of amortization deduction.** A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deductions with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The deduction provided under section 23(l) shall be allowed, beginning with the first month as to which the amortization deduction is not applicable, and the taxpayer shall not be entitled to any further amortization deductions with respect to such emergency facility.

(d) **Definitions.**

(1) **Emergency facility.** As used in this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or any part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1949, and with respect to which a certificate under subsection (e) has been made. In no event shall an amortization deduction be allowed in respect of any emergency facility for any taxable year unless a certificate in respect thereof under this paragraph shall have been made prior to the filing of the taxpayer's return for such taxable year, or, in the case of an emergency facility completed or acquired by a taxpayer after December 31, 1949, and before the date of enactment of the Revenue Act of 1950, unless a certificate in respect thereof under this paragraph shall have been made prior to the expiration of twelve months after the date of enactment of the Revenue Act of 1950.

(2) **Emergency period.** As used in this section, the term "emergency period" means the period beginning January 1, 1950, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (e) have been made is no longer required in the interest of national defense.

(e) **Determination of adjusted basis of emergency facility.** In determining, for the purposes of subsection (a) or subsection (g), the adjusted basis of an emergency facility—

(1) There shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority, designated by the President by Executive order, has certified as necessary in the interest of national defense during the emergency period, and only such portion of such amount as such authority has certified as attributable to defense purposes. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations but in no event shall such certificate have any effect unless an application therefor is filed before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, or

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before the expiration of six months after the date of enactment of the Revenue Act of 1950, whichever is later.

(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility but a separate basis shall be computed therefor pursuant to paragraph (1) as if it were a new and separate emergency facility.

(f) **Depreciation deduction.** If the adjusted basis of the emergency facility (computed without regard to this section) is in excess of the adjusted basis computed under subsection (e), the deduction provided by section 23(l) shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis for the purpose of such deduction were an amount equal to the amount of such excess.

(g) **Payment by United States of unamortized cost of facility.** If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in paragraph (1), then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be equal to the amount so includible but not in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this paragraph shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by the certifying authority designated by the President as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

(A) a contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

(B) the taxpayer had reasonable ground (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility, the deduction allowable under section 23(l) on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 23(l) or this paragraph).

(h) **Life tenant and remainderman.** In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(i) **Cross reference.** For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 117 (g) (3). Added Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 216(a), 64 Stat. 939.

1 So in original. Probably should read "been".

Historical Note

References in Text. Date of enactment of Revenue Act of 1950, referred to in subsecs. (d) (1) and (e) (1) was Sept. 23, 1950

Effective Date. Section 216(d) of Act Sept. 23, 1950, provided that this section and amendments of sections 23(t) and 117 (g) (2), (3) should be applicable with respect to taxable years ending after Dec. 31, 1949.

Certifying Authority. The Director of the Office of Defense Mobilization was designated as the certifying authority for purposes of subsecs (e) and (g) by Ex Ord.No.10480, Aug. 18, 1953, 18 F.R. 4939, set out as a note under section 2153 of Title 50, Appendix, War and National Defense.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Ex.Ord.No.10172. Ex.Ord.No 10172, Oct. 10, 1950, 15 F.R. 6929, relating to designation of certifying authority regarding emergency facilities was revoked by Ex. Ord.No 10200, Jan. 3, 1951, 16 F.R. 61, set out as a note under section 2153 of Appendix to Title 50, War and National Defense.

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 124B. Amortization for grain storage facilities

(a) Allowance of deduction.

(1) **Original owner.** Any person who constructs, reconstructs, or erects a grain storage facility (as defined in subsection (d)) shall, at his election, be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of such facility based on a period of sixty months. The sixty-month period shall begin as to any such facility, at the election of the taxpayer, with the month following the month in which the facility was completed, or with the succeeding taxable year.

(2) **Subsequent owners.** Any person who acquires a grain storage facility from a taxpayer who—

(A) elected under subsection (b) to take the amortization deduction provided by this subsection with respect to such facility, and

(B) did not discontinue the amortization deduction pursuant to subsection (c).

shall, at his election, be entitled to a deduction with respect to the adjusted basis (determined under subsection (e) (2)) of such facility based on the period, if any, remaining (at the time of acquisition) in the sixty-month period elected under subsection (b) by the person who constructed, reconstructed, or erected such facility.

(3) **Amount of deduction.** The amortization deduction provided in paragraphs (1) and (2) shall be an amount, with respect to each month of the amortization period within the taxable year, equal to the adjusted basis of the facility at the end of such month, divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall be in lieu of the deduction with respect to such facility for such month provided by section 23 (1) (relating to exhaustion, wear and tear, and obsolescence).

(b) **Election of amortization.** The election of the taxpayer under subsection (a) (1) to take the amortization deduction and to begin the sixty-month period with the month following the month in which the facility was completed shall be made only by a statement to that effect in the return for the taxable year in which the facility was completed. The election of the taxpayer under subsection (a) (1) to take the amortization deduction and to begin such period with the taxable year succeeding such year shall be made only by a statement to that effect in the return for

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such succeeding taxable year. The election of the taxpayer under subsection (a) (2) to take the amortization deduction shall be made only by a statement to that effect in the return for the taxable year in which the facility was acquired. Notwithstanding the preceding three sentences, the election of the taxpayer under subsection (a) (1) or (2) may be made, under such regulations as the Secretary may prescribe, before the time prescribed in the applicable sentence.

(c) **Termination of amortization deduction.** A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The deduction provided under section 23 (1) shall be allowed, beginning with the first month as to which the amortization deduction is not applicable, and the taxpayer shall not be entitled to any further amortization deduction with respect to such facility.

(d) **Definition of grain storage facility.** For the purposes of this section, the term "grain storage facility" means—

(1) any corn crib, grain bin, or grain elevator, or any similar structure suitable primarily for the storage of grain, which crib, bin, elevator, or structure is intended by the taxpayer at the time of his election to be used for the storage of grain produced by him (or, if the election is made by a partnership, produced by the members thereof); and

(2) any public grain warehouse permanently equipped for receiving, elevating, conditioning, and loading out grain, the construction, reconstruction, or erection of which was completed after December 31, 1952, and on or before December 31, 1956. If any structure described in clause (1) or (2) of the preceding sentence is altered or remodeled so as to increase its capacity for the storage of grain, or if any structure is converted, through alteration or remodeling, into a structure so described, and if such alteration or remodeling was completed after December 31, 1952, and on or before December 31, 1956, such alteration or remodeling shall be treated as the construction of a grain storage facility. The term "grain storage facility" shall include only property of a character which is subject to the allowance for depreciation provided in section 23 (1). The term "grain storage facility" shall not include any facility any part of which is an emergency facility within the meaning of section 124A.

(e) **Determination of adjusted basis.**

(1) **Original owners.** For the purpose of subsection (a) (1)—

(A) in determining the adjusted basis of any grain storage facility, the construction, reconstruction, or erection of which was begun before January 1, 1953, there shall be included only so much of the amount of the adjusted basis (computed without regard to this subsection) as is properly attributable to such construction, reconstruction, or erection after December 31, 1952, and

(B) in determining the adjusted basis of any facility which is a grain storage facility within the meaning of the second sentence of subsection (d), there shall be included only so much of the amount otherwise included in such basis as is properly attributable to the alteration or remodeling. If any existing grain storage facility as defined in the first sentence of subsection (d) is altered or remodeled as provided in the second sentence of subsection (d), the expenditures for such remodeling or alteration shall not be applied in adjustment of the basis of such existing facility but a separate basis shall be computed in respect of such facility as if the part altered or remodeled were a new and separate grain storage facility.

(2) **Subsequent owners.** For the purpose of subsection (a) (2), the adjusted basis of any grain storage facility shall be whichever of the following amounts is the smaller: (A) The basis (unadjusted) of such facility for the purposes of this section in the hands of the transferor, donor, or grantor, adjusted as if such facility in the hands of the taxpayer had a substitute basis within the meaning of section 113 (b) (2) (A), or (B) so much of the adjusted basis (for determining gain) of the facility in the hands of the taxpayer (as computed without regard to this subsection) as is properly attributable to construction, reconstruction, or erection after December 31, 1952.

(f) **Depreciation deduction.** If the adjusted basis of the grain storage facility (computed without regard to subsection (e)) exceeds the adjusted basis computed under subsection (e), the deduction provided by section 23 (1) shall, despite the provisions of subsection (a) (3) of this section, be allowed with respect to such grain storage facility as if the adjusted basis for the purpose of such deduction were an amount equal to the amount of such excess.

(g) **Life tenant and remainderman.** In the case of property held by one person for life with remainder to another person, the amortization deduction provided in subsection (a) shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. Added Aug. 15, 1953, c. 512, Title II, § 206(a), 67 Stat. 620.

Historical Note

Effective Date. Section 206(c) of Act Aug. 15, 1953 provided in part that this section should apply only with respect to taxable years ending after Aug. 15, 1953.

Short Title. Congress in enacting this section and amendments to sections 23, 24, 112, 113, 116, 122, 127, 154, 172, 190, 201, 203A, 311, 376, 433, 811, 939, 1621

and 3801 of I.R.C.1939 provided by section 1(a) of Act Aug. 15, 1953 that they should be known as the "Technical Changes Act of 1953."

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423.

§ 125. Amortizable bond premium

(a) **General rule.** In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond for any taxable year beginning after December 31, 1941:

(1) **Interest wholly or partially taxable.** In the case of a bond (other than a bond the interest on which is excludible from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) **Interest wholly tax-exempt.** In the case of any bond the interest on which is excludible from gross income, no deduction shall be allowed for the amortizable bond premium for the taxable year.

(3) **Adjustment of credit in case of interest partially tax-exempt.** In the case of any bond the interest on which is allowable as a credit against net income, the credit provided in section 25(a) (1) or (2), or section 26(a), as the case may be, shall be reduced by the amount of the amortizable bond premium for the taxable year.

(For adjustment to basis on account of amortizable bond premium, see section 113(b) (1) (H).)

(b) Amortizable bond premium.

(1) **Amount of bond premium.** For the purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with

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reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond. In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) **Amount amortizable.** The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year.

(3) **Method of determination.** The determinations required under paragraphs (1) and (2) shall be made—

(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium, prescribed by the Commissioner with the approval of the Secretary.

(c) Election on taxable and partially taxable bonds.

(1) **Eligibility to elect and bonds with respect to which election permitted.** This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply.

(A) **Partially tax-exempt.** In the case of a taxpayer other than a corporation, bonds with respect to the interest on which the credit provided in section 25(a) (1) or (2) is allowable; and

(B) **Wholly taxable.** In the case of any taxpayer, bonds the interest on which is not excludible from gross income but with respect to which the credit provided in section 25(a) (1) or (2), or section 26(a), as the case may be, is not allowable.

(2) **Manner and effect of election.** The election authorized under this subsection shall be made in accordance with such regulations as the Commissioner with the approval of the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the Commissioner permits him, subject to such conditions as the Commissioner deems necessary, to revoke such election. The election authorized under this subsection in the case of a member of a partnership shall be exercisable with respect to bonds of the partnership only by the partnership. In the case of bonds held by a common trust fund, as defined in section 169, or by a foreign personal holding company, as defined in section 331, the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund or foreign personal holding company.

(d) **Definition of bond.** As used in this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation

held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Dealers in tax-exempt securities. For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 22(o). Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 126(b), 56 Stat. 822, amended Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 203(b) (2), 217 (a), 64 Stat. 928, 941.

Historical Note

1950 Amendment. Subsec. (b) (1) amended by Act Sept. 23, 1950, § 217(a), which added last sentence.

Subsec. (e) added by Act Sept. 23, 1950, § 203(b) (2).

Effective Date of 1950 Amendments. Section 217(b) of Act Sept. 23, 1950, provided that the amendment of subsec (b) (1) should be applicable with respect to taxable years beginning after June 15, 1950, and should also apply, in the case of a taxable year beginning on or before June 15, 1950, with respect to bonds acquired after such date.

Amendment of subsec. (e) by Act Sept. 23, 1950, as applicable to taxable years ending after June 30, 1950, see note set out under section 22 of I.R.C.1939.

Effective Date of 1942 Amendment. Section 101 of Act Oct 21, 1942, made

section applicable to taxable years beginning after Dec 31, 1941

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States" Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 126. Income in respect of decedents

(a) Inclusion in gross income.

(1) General rule. The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc. If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who receives such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For the purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, but does not include a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

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(3) **Character of income determined by reference to decedent.** The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction by which the decedent acquired such right; and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(b) **Allowance of deductions and credit.** The amount of any deduction specified in section 23(a), (b), (c), or (m) (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 31 (foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) **Expenses, interest, and taxes.** In the case of a deduction specified in section 23(a), (b), or (c) and a credit specified in section 31, in the taxable year when paid,—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) **Depletion.** In the case of the deduction specified in section 23(m), to the person described in subsection (a) (1) (A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax.

(1) **Allowance of deduction.** A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a) (1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a) (1).

(2) **Method of computing deduction.** For the purposes of paragraph (1):

(A) The term "estate tax" means the tax imposed upon the estate of the decedent under section 810 or 860, reduced by the credits against such tax, plus the tax imposed upon the estate of the decedent under section 935, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a) (1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a) (1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b).

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 134 (e), 56 Stat. 831.

Historical Note

Effective Date. Section 134(f) of Act Oct. 21, 1942, made section applicable to taxable years ending after Dec. 31, 1942.

Computation of Taxes between 1933 and 1943. Section 134(g) of Act Oct. 21, 1942, provided as follows: "In case the taxable period in which falls the date of the death of the decedent began after December 31, 1933, and before January 1, 1943, the tax for such taxable period shall be computed as if provisions corresponding to the provisions of sections 42(a) and 43 of the Internal Revenue Code [1939], as amended by subsections (a) and (b) of this section, were a part of the Revenue Act of 1934, the Revenue Act of 1936, the Revenue Act of 1938, or the Internal Revenue Code, whichever is applicable to such taxable period. In the case of the estate of such a decedent and of each person who acquires by reason of the death of such decedent or by bequest, devise, or inheritance from such decedent the right to receive the amount of items of gross income of the decedent which upon the application of the preceding sentence are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period, the tax for each taxable period ending on or after the date on which the decedent died shall be computed by including in gross income the amounts with respect to such decedent which would be includible, and by allowing as deductions and credits the amounts with respect to such decedent which would be allowable, if provisions corresponding to the provisions of the section inserted in the Internal Revenue Code (section 126) by subsection (e) of this section were a part of the law applicable to such taxable period. The provisions of this subsection shall not be applicable unless there are filed with the Commissioner (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, and at the time prescribed by such regulations) signed consents made under oath by the fiduciary representing the estate and by each such person (or if any such person is no longer in existence or is under disability, by his legal representative) that with respect to such amounts the tax of the estate, or the tax of such person, as the case may be, shall be computed under the provisions of this subsection for each taxable period ending on or after the date of the death of the decedent and the tax of the decedent shall be computed under such provisions for the taxable period of the decedent in which falls the date of his death. If such consent is filed after the time for the filing of the return with respect to any such taxable period, the deficiency resulting from the failure to compute the tax for such taxable period in accordance with such consent shall be paid

on the date of the filing of the consent with the Commissioner, or on the date prescribed for the payment of the tax for the taxable period, whichever is later, and the period of limitations provided in sections 275 and 276 of the Internal Revenue Code or a corresponding provision of a prior revenue law on the making of assessments and the beginning of distraint or a proceeding in court for collection shall with respect to such deficiency include one year immediately after the date the consent was filed, and such assessment and collection may be made notwithstanding any provision of the internal revenue laws or any rule of law which would otherwise prevent such assessment and collection. The period within which claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, with respect to any overpayment resulting from the failure to compute the tax for any such taxable period (except the taxable period of the decedent in which falls the date of his death) in accordance with such consent shall include one year immediately after the date of the filing of the consent, and credit or refund may be allowed or made notwithstanding any provision of the internal revenue laws or any rule of law which would otherwise prevent such credit or refund, but no interest shall be allowed or paid with respect to any such overpayment. The provisions of section 322(b) (2) and (3) of the Internal Revenue Code or a corresponding provision of a prior revenue law shall not apply to the refund of any such overpayment. If the application of this subsection to the taxable period of the decedent in which falls the date of his death results in a deficiency for such taxable period, and if the income tax of the decedent for such period was deducted in computing the net estate of the decedent under Chapter 3 of the Internal Revenue Code or under a corresponding title of a prior revenue law, and if at the time such deficiency is assessed credit or refund of any resulting overpayment in respect of the taxes imposed by such Chapter 3 or corresponding title upon such net estate is prevented by any provision of the internal revenue laws or by any rule of law, then the amount of such deficiency which is assessed and collected shall be reduced by the amount of such resulting overpayment under such Chapter 3 or corresponding title which would be credited or refunded if credit or refund thereof were not so prevented. This subsection shall not be deemed to change any provision of law limiting the allowance of refund or credit with respect to overpayments for the taxable period of the decedent in which falls the date of his death, and no interest shall be allowed or paid with respect to any overpayment resulting from the

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application of this subsection to such taxable period. If the application of this subsection to the taxable period of the decedent [decedent] in which falls the date of his death results in an overpayment for such taxable period, and if such overpayment was included as part of the income tax of the decedent which was deducted in computing the net estate of the decedent under Chapter 3 of the Internal Revenue Code or under a corresponding title of a prior revenue law, and if, at the time such overpayment is credited or refunded the assessment and collection of deficiencies in respect of the taxes imposed by such Chapter 3 or corresponding title upon such net estate is

prevented by any provision of the internal revenue laws or by any rule of law, then the amount of such overpayment which is credited or refunded shall be reduced by the amount of the resulting deficiencies under such Chapter 3 or corresponding title which would be assessable if the assessment and collection thereof were not so prevented."

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 127. War losses

(a) Cases in which loss deemed sustained, and time deemed sustained.

For the purposes of this chapter—

(1) **Property not in enemy countries.** Property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in the present war shall be deemed to have been destroyed or seized on a date chosen by the taxpayer in the manner provided in paragraph (4), which falls between—

(A) the latest date, as established to the satisfaction of the Commissioner, on which such property may be considered as not destroyed or seized, and

(B) the earliest date, as established to the satisfaction of the Commissioner on which such property may be considered as having already been destroyed or seized.

For the purposes of this paragraph property within an area which comes under the control of a country at war with the United States after the date war with such country is declared by the United States shall be deemed to have been destroyed or seized in the course of military or naval operations by such country, and the date specified in subparagraph (A) shall not be later than the latest date determined by the Commissioner as the date on which such area was under the control of the United States or a country not at war with the United States, and the date specified in subparagraph (B) shall not be later than the earliest date determined by the Commissioner as the date on which such area may be considered under the control of the country which is at war with the United States.

(2) **Property in enemy countries.** Property within any country at war with the United States, or within an area under the control of any such country on the date war with such country was declared by the United States, shall be deemed to have been destroyed or seized on the date war with such country was declared by the United States.

(3) **Investments referable to destroyed or seized property.** Any interest in, or with respect to, property described in paragraph (1) or (2) (including any interest represented by a security as defined in section 23(g) (3) or section 23(k) (3)) which becomes worthless shall be considered to have been destroyed or seized (and the loss therefrom shall be considered a loss from the destruction or seizure) on the date chosen by the taxpayer which falls between the dates specified in paragraph (1), or on the date prescribed in paragraph (2), as the case may be, when the last property (described in the applicable paragraph) to which the interest relates would be deemed destroyed or seized under the applicable paragraph. This paragraph shall apply only if the interest would have become worthless if the property had been destroyed.

For the purposes of this paragraph, an interest shall be deemed to have become worthless notwithstanding the fact that such interest has a value if such value is attributable solely to the possibility of recovery of the property, compensation (other than insurance or similar indemnity) on account of its destruction or seizure, or both. Section 23(g) (2) and (k) (2) shall not apply to any interest which under this paragraph is considered to have been destroyed or seized. Under regulations prescribed by the Commissioner with the approval of the Secretary, a taxpayer which owns 100 per centum (excluding qualifying shares) of each class of stock of a corporation may elect to determine the worthlessness of its interest, described in this paragraph, in or with respect to the property of the corporation, without regard to the amount of the property of such corporation which would be excluded under subsection (e) (2) (A) in determining the adjusted basis of all the assets of the corporation for the purposes of subsection (e), but such amount shall be treated under subsection (b) (1) as a recovery by the taxpayer in the taxable year with respect to such interest.

(4) **Choice of date.** The taxpayer's choice of a date under paragraph (1) or (3) shall be effective only if made within such time and in such manner as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Amount of loss on destroyed or seized property.** In the case of any property or interest in or with respect to property deemed to be destroyed or seized under subsection (a)—

(1) The amount of the loss on account of such property or interest shall be determined with regard to any recoveries with respect thereto in the taxable year but without regard to any possibility of recovering such property or interest, or of receiving any compensation (other than insurance or similar indemnity) on account of such property or interest in the taxable year or in any future taxable year.

(2) The taxpayer may choose to decrease the amount of the loss by all obligations or liabilities of the taxpayer with respect to such property or interest discharged or satisfied out of the property or interest upon its destruction or seizure, if the Commissioner is satisfied that such obligations or liabilities are so discharged or satisfied in a subsequent taxable year, or that the taxpayer is unable to determine whether or not such obligations or liabilities are in fact discharged or satisfied.

No loss shall be deemed to have been sustained upon the destruction or seizure of such property or interest to the extent that it is compensated for by the discharge or satisfaction of obligations and liabilities of the taxpayer out of such property or interest in the taxable year in which such destruction or seizure is deemed to have occurred. The taxpayer's choice under this subsection shall be effective only if made within such time and in such manner as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary.

(c) **Recoveries**

(1) **General rule.** Upon the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year, the amount of such recovery shall be included in gross income to the extent provided in paragraph (2), unless the provisions of paragraph (3) are applicable to the taxable year pursuant to an election made by the taxpayer under the provisions of paragraph (5).

(2) **Inclusion in gross income**

(A) **Amount of Recovery.** The amount of the recovery of any money or property in respect of property considered under subsection (a) as de-

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stroyed or seized in any prior taxable year shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery.

(B) Amount of Gain Includible. To the extent that the amount of the recovery plus the aggregate of the amounts of previous such recoveries do not exceed that part of the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a) which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2, such amount shall not be includible in gross-income and shall not be deemed gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed that part of the aggregate of such deductions, which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2 and do not exceed that part of the aggregate of such deductions which did result in a reduction of any tax of the taxpayer under this chapter or chapter 2, such amount shall be included in gross income but shall not be deemed a gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a), such amount shall be considered a gain upon the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 112(f). If for any previous taxable year the taxpayer chooses under subsection (b) to treat any obligations and liabilities as discharged or satisfied out of the property or interest described in subsection (a), and if such obligations and liabilities were not so discharged or satisfied, the amount of such obligations and liabilities treated as discharged or satisfied under subsection (b) shall be considered for the purposes of this section as a deduction by reason of this section which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2. For the purposes of this paragraph an allowable deduction for any taxable year on account of the destruction or seizure of property described in subsection (a) shall, to the extent not allowed in computing the tax of the taxpayer for such taxable year, be considered an allowable deduction which did not result in a reduction of any tax for the taxpayer under this chapter or chapter 2.

(3) Tax adjustment measured by prior benefits. If the provisions of this paragraph are applicable to the taxable year pursuant to an election made by the taxpayer under the provisions of paragraph (5)—

(A) Amount of Recovery. The amount of the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery. For the purpose of this paragraph, in the case of the recovery of the same property or interest considered under subsection (a) as destroyed or seized, the fair market value of such property or interest shall, at the option of the taxpayer, be considered an amount equal to the adjusted basis (for determining loss) of such property or interest in the hands of the taxpayer on the date such property or interest was considered under subsection (a) as destroyed or seized. The amount of the recovery determined under this subparagraph shall be reduced for the purposes of subparagraphs (B) and (C) by the amount of the obligations or liabilities with respect to the property considered under subsection (a) as destroyed or seized in respect of which the recovery was received, if the taxpayer for any previous taxable year chose under subsection (b) (2) to treat such obligations or lia-

bilities as discharged or satisfied out of such property, and such obligations or liabilities were not so discharged or satisfied prior to the date of the recovery.

(B) Adjustment for Prior Tax Benefits. That part of the amount of the recovery, in respect of any property considered under subsection (a) as destroyed or seized, which is not in excess of the allowable deductions in prior taxable years on account of such destruction or seizure of the property (the amount of such allowable deductions being first reduced by the aggregate amount of any prior recoveries in respect of the same property) shall be excluded from gross income for the taxable year of the recovery for the purpose of computing the tax under this chapter and chapter 2; but there shall be added to, and assessed and collected as a part of, the tax under this chapter for the taxable year of the recovery the total increase in the tax under this chapter and chapter 2 for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, such deductions allowable in the prior taxable years with respect to the destruction or seizure of the property. Such increase in the tax for each such year so resulting shall be computed in accordance with regulations prescribed by the Secretary. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 22(b) (12)) with respect to any prior year, and shall provide for the case where there was no tax for the prior year, but shall otherwise treat the tax previously determined for any year in accordance with the principles set forth in section 3801(d). All credits allowable against the tax for any year and all carry-overs and carry-backs affected by so decreasing the allowable deductions shall be taken into account in computing the increase in the tax, except that the computation of the excess profits credit under chapter 2E for any taxable year shall not be affected.

(C) Gain Upon Recovery. The amount of any recovery or part thereof, in respect of property considered under subsection (a) as destroyed or seized, which is not excluded from gross income under the provisions of subparagraph (B) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 112(f).

(D) Recoveries Treated as Gross Income for Certain Purposes. For the purposes of sections 51, 52, and 3801(b) the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be deemed to be an item includible in gross income for the taxable year in which the recovery is made.

(4) Restoration of value of investments referable to destroyed or seized property. For the purpose of this subsection the restoration in whole or in part of the value of any interest described in subsection (a) (3) by reason of any recovery of money or property in respect of property to which such interest related and which was considered under subsection (a) (1) or (2) as destroyed or seized shall be deemed a recovery of property in respect of property considered under subsection (a) as destroyed or seized. In applying paragraph (3) of this subsection such restoration shall be treated as the recovery of the same interest considered under subsection (a) as destroyed or seized.

(5) Election by taxpayer for application of paragraph (3). If the taxpayer elects to have the provisions of paragraph (3) applicable to any taxable year in which he recovered any money or property in respect of property considered under subsection (a) as destroyed or seized, the provisions of paragraph (3) shall be applicable to all taxable years of the taxpayer beginning after December 31, 1941, and such election, once made, shall be irrevocable. The election shall be made in such manner and at such time

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as the Secretary may by regulations prescribe, except that no election under this paragraph may be made after December 31, 1953, unless the taxpayer recovers money or property (in respect of property considered under subsection (a) as destroyed or seized) during a taxable year ending after the date of the enactment of the Revenue Act of 1951. If pursuant to such election the provisions of paragraph (3) are applicable to any taxable year—

(A) the period of limitations provided in sections 275 and 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall not, with respect to—

(i) the amount to be added to the tax for such taxable year under the provisions of paragraph (3), and

(ii) any deficiency for such taxable year or for any other taxable year, to the extent attributable to the basis of the recovered property being determined under the provisions of subsection (d) (2), expire prior to the expiration of two years following the date of the making of such election, and such amount and such deficiency may be assessed at any time prior to the expiration of such period notwithstanding any law or rule of law which would otherwise prevent such assessment and collection, and

(B) in case refund or credit of any overpayment resulting from the application of the provisions of paragraph (3) to such taxable year is prevented on the date of the making of such election, or within one year from such date, by the operation of any law or rule of law (other than section 3761, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.

In the case of any taxable year ending before the date of the making by the taxpayer of an election under this paragraph, no interest shall be paid on any overpayment resulting from the application of the provisions of paragraph (3) to such taxable year, and no interest shall be assessed or collected with respect to any amount or any deficiency specified in clause (A), for any period prior to the expiration of six months following the date of the making of such election by the taxpayer.

(d) Basis of recovered property

(1) **In general.** The unadjusted basis of property recovered in respect of property considered as destroyed or seized under subsection (a) shall be determined under this subsection. Such basis shall be an amount equal to the fair market value of such property, determined as of the date of the recovery, reduced by an amount equal to the excess of the aggregate of such fair market value and the amounts of previous recoveries of money or property in respect of property considered under subsection (a) as destroyed or seized over the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a), and increased by that portion of the amount of the recovery which under subsection (c) is treated as a recognized gain from the involuntary conversion of property. Upon application of the taxpayer, the aggregate of the bases (determined under the preceding sentence) of any properties recovered in respect of properties considered under subsection (a) as destroyed or seized may be allocated among the properties so recovered in such manner as the Secretary may determine under regulations prescribed by him, and the amounts so allocated to any such property so recovered shall be the unadjusted basis of such property in lieu of the unadjusted basis of such property determined under the preceding sentence.

(2) **Property recovered in taxable year to which subsection (c) (3) is applicable.** In the case of a taxpayer who has made an election under the

provisions of subsection (c) (5), the basis of property recovered shall be an amount equal to the value at which such property is included in the amount of the recovery under subsection (c) (3) (A) (determined without regard to the last sentence thereof), reduced by such part of the gain under subsection (c) (3) (C) which is not recognized as provided in section 112(f).

(e) Partial worthlessness of certain investments in destroyed or seized property.

(1) **Destruction or seizure of investment.** If a taxpayer owns not less than 50 per centum of each class of stock of a corporation, if such corporation has property described in subsection (a) (1) or (2) deemed to be destroyed or seized, the adjusted basis for determining loss of which is at least 75 per centum of the adjusted basis for determining loss of all such corporation's property, and if such corporation completely liquidates (by distributing all the assets which it is able to distribute and all its rights to assets which it is not able to distribute, including the right to the recovery of the property described in subsection (a) (1) and (2)) within one year after such property is deemed to be destroyed or seized, or within six months after the date of the enactment of the Revenue Act of 1942,¹ whichever is the later, then that part of the loss by the taxpayer on such liquidation which would be attributable to the destruction or seizure of such property, as established to the satisfaction of the Commissioner, shall be treated for the purposes of this chapter as a loss by the taxpayer upon the destruction or seizure of the part of the stock or other interest of the taxpayer to which such loss is allocable. Such part of the stock or other interest of the taxpayer shall be treated for the purposes of subsections (b), (c), and (d) as property described in subsection (a) (3).

(2) **Application of paragraph (1).** For the purposes of paragraph (1)—

(A) In determining the adjusted basis of all the property of the corporation, there shall be excluded money in the United States, bank deposits, the right to receive money from any person not situated in a country at war with the United States or in a territory under the control of such a country, and obligations issued or guaranteed as to principal or interest by the United States, except that there shall not be excluded any such property which is destroyed or seized as described in subsection (a) within or before the taxable period.

(B) The adjusted basis of property of such corporation shall be determined as of the date immediately preceding the first date on which any property was destroyed or seized, as described in subsection (a), or as of any later date falling within or before the taxable period on the basis of which such determination will produce a greater amount.

(f) **Determination of tax benefits.** The determination as to whether and to what extent an allowable deduction on account of the destruction or seizure of property described in subsection (a) did or did not result in a reduction of any tax of the taxpayer under this chapter shall be made in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 156(a), 56 Stat. 852, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 341(a, b), 65 Stat. 511; Aug. 15, 1953, c. 512, Title I, § 103, 67 Stat. 616.

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Historical Note

References in Text. Chapter 2E, referred to in subsec. (c) (3) (B), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761, and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 563.

Date of enactment of Revenue Act of 1951, referred to in subsec. (c) (5), was Oct. 20, 1951.

Date of the Revenue Act of 1942, referred to in subsec. (e) (1), was Oct. 21, 1942, 4:30 p. m., E.W.T.

1953 Amendment. Subsec. (c) (5) amended by Act Aug. 15, 1953, which extended from December 31, 1952 to December 31, 1953 the time for making an election with respect to war loss recoveries.

1951 Amendment. Subsec. (c) amended by Act Oct. 20, 1951, § 341(a), to provide that, at the election of the taxpayer, in the case of war loss recoveries the tax for the year in which the deduction was taken is to be recomputed by reducing the deduction by the amount of the recovered property, taken at its depreciated cost on the date of the loss or its fair market value on the date of recovery, whichever is lower, and by adding the increase, if any, in the tax so resulting to the tax for the year of recovery.

Subsec. (d) amended by Act Oct. 20, 1951, § 341(b), which added par. (2).

Effective Date of 1951 Amendment. Amendments of subssecs. (c) and (d) made applicable to taxable years beginning after Dec. 31, 1951, by section 341 (d) of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Section 156 (b) of Act Oct. 21, 1942, made section applicable to taxable years beginning after Dec. 31, 1940.

Extension of Time for Claiming Credit or Refund With Respect to War Losses. Act June 29, 1948, c. 726, 62 Stat. 1102, as amended Aug. 27, 1949, c. 517, § 2, 63 Stat. 667, provided: "That if a claim for credit or refund under the internal-

revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in respect of property considered destroyed or seized under section 127(a) of the Internal Revenue Code [this section], relating to war losses, for a taxable year beginning in 1941 or 1942, the three-year period of limitation prescribed in section 322(b) (1) [section 322 (b) (1) of I R C 1939] of the Internal Revenue Code shall in no event expire prior to December 31, 1950. In the case of such a claim filed on or before December 31, 1950, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322(b) (2) or (3) [section 322(b) (2) or (3) of this title] of the Internal Revenue Code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section."

Similar provisions were contained in the following Acts:

1947—Aug. 4, 1947, c. 481, 61 Stat. 756.

1946—July 31, 1946, c. 717, § 2, 60 Stat. 750.

1945—Dec. 19, 1945, c. 652, Title II, 59 Stat. 673.

1944—Dec. 20, 1944, c. 616, § 3, 58 Stat. 831.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 803.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. Service, p. 2423. See, also, Act Oct. 20, 1951, 1951 U.S. Code Cong. and Adm. News, p. 1781.

§ 128. Recovery of unconstitutional federal taxes

Income (excluding interest) attributable to the recovery during the taxable year of a tax imposed by the United States which has been held unconstitutional, and in respect of which a deduction was allowed in a prior taxable year may be excluded from gross income for the taxable year, and the deduction allowed in respect thereof in such prior taxable year treated as not having been allowable, if—

(a) The taxpayer elects in writing (at such time and in such manner as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary) to treat such deduction as not having been allowable for such prior taxable year, and

(b) The taxpayer consents in writing to the assessment, within such period as may be agreed upon, of any deficiencies resulting from such

treatment, even though the statutory period for the assessment of any such deficiency had expired prior to the filing of such consent. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 157(a), 56 Stat. 856.

Historical Note

Effective Date. Section 157(b) of Act Oct. 21, 1942, made section applicable to taxable years beginning after Dec. 31, 1940.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 129. Acquisitions made to evade or avoid income or excess profits tax

(a) **Disallowance of deduction, credit, or allowance.** If (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For the purposes of clauses (1) and (2), control means the ownership of stock possessing at least 50 per centum of the total combined voting power of all classes of stock entitled to vote or at least 50 per centum of the total value of shares of all classes of stock of the corporation.

(b) **Power of Commissioner to allow deduction, etc., in part.** In any case to which subsection (a) is applicable the Commissioner is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2). Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 128(a), 58 Stat. 47.

Historical Note

Effective Date. Section 128(c) of Act Feb. 25, 1944, provided: "The amendments made by this section [to section 45, and adding section 129] shall be effective with respect to taxable years beginning after December 31, 1943. The determination of the law applicable to prior taxable years shall be made as if this section had not been enacted and without inferences drawn from the fact that the amendment made by this section is not

expressly made applicable to prior taxable years."

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

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§ 130. Limitation on deductions allowable to individuals in certain cases

(a) **Recomputation of net income.** If the deductions (other than taxes and interest) allowable to an individual (except for the provisions of this section) and attributable to a trade or business carried on by him for five consecutive taxable years have, in each of such years, exceeded by more than \$50,000 the gross income derived from such trade or business, the net income of such individual for each of such years shall be recomputed. For the purpose of such recomputation in the case of any such taxable year, such deductions shall be allowed only to the extent of \$50,000 plus the gross income attributable to such trade or business, except that the net operating loss deduction, to the extent attributable to such trade or business, shall not be allowed.

(b) **Redetermination of tax.** Upon the basis of the net income computed under the provisions of subsection (a) for each of the five consecutive taxable years specified in such subsection, the tax imposed by this chapter shall be redetermined for each such taxable year. If for any such taxable year assessment of a deficiency is prevented (except for the provisions of sections 3801 and 3807) by the operation of any law or rule of law (other than section 3761, relating to compromises) any increase in the tax previously determined for such taxable year shall be considered a deficiency for the purposes of this section. For the purposes of this section the term "tax previously determined" shall have the meaning assigned to such term by section 3801(d).

(c) **Extension of statute of limitations.** Notwithstanding any law or rule of law (other than section 3761, relating to compromises), any amount determined as a deficiency under subsection (b), or which would be so determined if assessment were prevented in the manner described in subsection (b), with respect to any taxable year may be assessed as if on the date of the expiration of the time prescribed by law for the assessment of a deficiency for the fifth taxable year of the five consecutive taxable years specified in subsection (a), one year remained before the expiration of the period of limitation upon assessment for any such taxable year. Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 129(a), 58 Stat. 48.

Historical Note

Effective Date. Section 129(b) of Act Feb. 25, 1944, provided as follows: "The amendment made by subsection (a) [adding this section] shall be applicable to taxable years beginning after December 31, 1939, but shall not affect any tax liability for any taxable year beginning prior to Jan. 1, 1944."

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 130A. Employee stock options

(a) **Treatment of restricted stock options.** If a share of stock is transferred to an individual pursuant to his exercise after 1949 of a restricted stock option, and no disposition of such share is made by him within two years from the date of the granting of the option nor within six months after the transfer of such share to him—

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 23(a) shall be allowable at any time to the employer corporation of such individual or its parent or subsidiary corporation with respect to the share so transferred; and

(3) no amount other than the option price shall be considered as received by either of such corporations for the share so transferred.

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This subsection and subsection (b) shall not apply unless (A) the individual, at the time he exercises the restricted stock option, is an employee of the corporation granting such option or of a parent or subsidiary corporation of such corporation, or (B) the option is exercised by him within three months after the date he ceases to be an employee of any of such corporations.

(b) Special rule where option price is between 85 percent and 95 percent of value of stock. If no disposition of a share of stock acquired by an individual upon his exercise after 1949 of a restricted stock option is made by him within two years from the date of the granting of the option nor within six months after the transfer of such share to him, but, at the time the restricted stock option was granted, the option price was less than 95 per centum of the fair market value at such time of such share, then, in the event of any disposition of such share by him, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever is applicable, an amount equal to the amount (if any) by which the option price is exceeded by the lesser of—

(1) the fair market value of the share at the time of such disposition or death, or

(2) the fair market value of the share at the time the option was granted.

In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

(c) Acquisition of new stock. If stock transferred to an individual upon his exercise of the option is exchanged by him for stock or securities in an exchange within the provisions of section 112(b) (2) or (3), or if new stock, as described in section 113(a) (19), is acquired upon a distribution with respect to such stock, the stock or securities acquired in such exchange and such new stock shall be considered as having been transferred to him upon his exercise of such option. A similar rule shall be applied in the case of a series of such exchanges or acquisitions.

(d) Definitions. As used in this section—

(1) Restricted stock option. The term "restricted stock option" means an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(A) At the time such option is granted the option price is at least 85 per centum of the fair market value at such time of the stock subject to the option; and

(B) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(C) Such individual, at the time the option is granted, does not own stock possessing more than 10 per centum of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For the purposes of this subparagraph—

(i) such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(ii) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

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(2) **Parent corporation.** The term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of granting of the option, each of the corporations other than the employer corporation owns stock possessing more than 50 per centum of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(3) **Subsidiary corporation.** The term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing more than 50 per centum of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(4) **Disposition.** The term "disposition" includes a sale, exchange, gift, or any transfer of legal title, but does not include—

(A) a transfer from a decedent to his estate or a transfer by bequest or inheritance;

(B) an exchange which is within the provisions of section 112(b) (2) or (3); or

(C) a mere pledge or hypothecation.

(5) **Stockholder approval.** If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(e) **Modification, extension, or renewal of option.** For the purposes of subsection (d), if the terms of any option to purchase stock are modified, extended, or renewed, the following rules shall be applied with respect to transfers of stock made upon an exercise of the option after the making of such modification, extension, or renewal:

(1) Such modification, extension, or renewal shall be considered as the granting of a new option;

(2) The fair market value of such stock at the time of the granting of such option shall be considered as (A) the fair market value of such stock on the date of the original granting of the option, (B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or (C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal, whichever is the highest. Added Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 218(a), 64 Stat. 942, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 331(a), 65 Stat. 506.

Historical Note

1951 Amendment. Subsec. (d) (5) added by Act Oct. 20, 1951, § 331(a).

Effective Date of 1951 Amendment. Addition of subsec. (d) (5) made effective as if it had been enacted as a part of this section, by section 331(b) of Act Oct. 20, 1951.

Effective Date. Section 218(b) of Act Sept. 23, 1950, provided that this section should be applicable with respect to taxable years ending after Dec. 31, 1949.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where

its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Act Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053.

SUPPLEMENT C.—CREDITS AGAINST TAX

[Supplementary to Subchapter B, Part III]

§ 131. Taxes of foreign countries and possessions of United States

(a) Allowance of credit. If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102 and except the additional tax imposed for the taxable year under the provisions of section 127(c) (3) and except the tax imposed under subchapter E and except, with respect to the tax imposed under subchapter D, only to the extent provided in subsection (j), shall be credited with:

(1) Citizens and domestic corporations. In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico. In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico. In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) Partnerships and estates. In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter.

(b) Limit on credit. The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed, in the case of a taxpayer other than a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year, or in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources within such country bears to its entire normal-tax net income for the same taxable year; and

(2) The total amount of the credit shall not exceed, in the case of a taxpayer other than a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year, or, in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources without the United States bears to its entire normal-tax net income for the same taxable year; and

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(3) Omitted. Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122 (g) (6), 59 Stat. 570.

(c) **Adjustments on payment of accrued taxes.** If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require. In such redetermination by the Commissioner of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in subsection (a) imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this section, and no deduction under section 23, shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due upon any redetermination by the Commissioner, resulting from a refund to the taxpayer, for any period prior to the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(d) **Year in which credit taken.** The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) **Proof of credits.** The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

(f) **Taxes of Foreign Corporation.**

(1) **Treatment of taxes paid by foreign corporation.** For the purposes of this section, a domestic corporation which owns at least 10 per centum of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid.

which the amount of such dividends bears to the amount of such accumulated profits. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(2) **Foreign subsidiary of foreign corporation.** If such foreign corporation owns 50 per centum or more of the voting stock of another foreign corporation from which it receives dividends in any taxable year it shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such other foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of the corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

(g) **Corporations treated as foreign.** For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U.S.C., Title 15, c. 4), and entitled to the credit provided for in section 262.

(h) **Credit for taxes in lieu of income, etc., taxes.** For the purposes of this section and section 23(c) (1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits otherwise generally imposed by any foreign country or by any possession of the United States.

(i) **Tax withheld at source.** For the purposes of this supplement the tax imposed by this chapter shall be the tax computed without regard to the credit provided in section 32 and section 35.

(j) **Tax imposed by subchapter D.** This section shall be applicable for purposes of the tax imposed by subchapter D, but the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed under this section with respect to such tax against the tax imposed by this chapter without regard to subchapter D. The amount of the credit taken under this subsection shall be subject to each of the following conditions:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within such country bears to its entire excess profits net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same tax-

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able year. 53 Stat. 56, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 216, 53 Stat. 876; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 158(a), (d-f), 172(d), 56 Stat. 856, 857, 893; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 130(a, b), 58 Stat. 49; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 6(b) (4, 5), 58 Stat. 234; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (6), 59 Stat. 570; Oct. 25, 1949, c. 720, § 2(a), 63 Stat. 891; Aug. 28, 1950, c. 809, Title II, § 208(d) (3), 64 Stat. 544; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(h), 64 Stat. 946; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 302, 64 Stat. 1219; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 332, 341(c), 65 Stat. 506, 515.

Historical Note

1951 Amendments. Subsec. (a) amended by Acts Oct. 20, 1951, § 341(c), and Jan. 3, 1951, § 302(a). Act Oct. 20, 1951 inserted "and except * * * section 127(c) (3)" following "section 102". Act Jan. 3, 1951, inserted "and except * * * in subsection (j)" following "subchapter E".

Catchline of subsec. (f) (1) amended by Act Oct. 21, 1951, § 332(c), to read as now set out.

Subsec. (f) (1) amended by Act Oct. 20, 1951, § 332(a), to substitute "at least 10 per centum" for "a majority" in first sentence.

Subsec. (f) (2) amended by Act Oct. 20, 1951, § 332(b), to substitute "50 per centum or more of the voting stock" in lieu of "all the voting stock (except qualifying shares)".

Subsec. (j) added by Act Jan. 3, 1951, § 302(b).

1950 Amendment. Subsec. (a), opening par. amended by Act Aug. 28, 1950, which inserted "and except the tax imposed under subchapter E" immediately following "except the tax imposed under section 102".

Subsec. (a) (2, 3) amended by Act Sept. 23, 1950, to make said subsec. applicable to Puerto Rico.

1949 Amendment. Subsec. (c) amended by Act Oct. 25, 1949, which added last two sentences to clarify the adjustment of the foreign tax credit by only considering the net amount as having been refunded.

1945 Amendment. Subsec. (b) amended by Act Nov. 8, 1945, § 122(g) (6), which struck out par. (3) thereof.

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which struck out "or section 450" following "section 102" in first par.

Subsec. (b) amended by Act Feb. 25, 1944, which among other changes added par. (3).

Subsec. (f) amended by Act Feb. 25, 1944, which omitted proviso to first sentence.

Subsec. (i) amended by Act May 29, 1944, which struck out "466(e)" and inserted in lieu thereof "35".

1942 Amendment. Subsecs. (a, b, f), amended and subsecs. (h, i), added by Act Oct. 21, 1942.

1939 Amendment. Subsecs. (a, b, f) amended by Act June 29, 1939.

Effective Date of 1951 Amendment. Amendment of subsec. (a) made applicable to taxable years beginning after Dec. 31, 1951, by section 341(d) of Act Oct. 20, 1951.

Amendment of subsec. (f) (1) made effective with respect to dividends received by a domestic corporation from a foreign corporation during taxable years beginning after Dec. 31, 1950, by section 332(a) of Act Oct. 20, 1951.

Amendment of subsec. (f) (2) made effective with respect to dividends received by a foreign corporation from another foreign corporation in taxable years beginning after Dec. 31, 1950 by section 332(b) of Act Oct. 20, 1951.

Effective Date of 1950 Amendment. Amendment of section by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C.1939.

Effective Date of 1949 Amendment. Section 2(b) of Act Oct. 25, 1949, provided that: "The amendment made by subsection (a) [to this section] shall be applicable with respect to taxable years beginning after December 31, 1938. If the allowance of a credit or refund of any overpayment of tax resulting from the application of the amendment made by subsection (a) [to this section] is prevented on the date of the enactment of this Act [Oct. 25, 1949], or within one year from such date, by the operation of any law or rule of law (other than section 3761 of the Internal Revenue Code [1939], relating to compromises), credit or refund of such overpayment may, nevertheless, be allowed or made if claim therefor is filed within one year from the date of the enactment of this Act."

Effective Date of 1945 Amendment. Amendment of subsec. (b) made applicable to taxable years beginning after Dec. 31, 1945, by section 122(g) of Act Nov. 8, 1945.

Effective Date of 1944 Amendments. Amendment of subsecs. (a) and (i) made applicable to taxable years beginning after Dec. 31, 1943, by section 2 of Act May 25, 1944.

Section 130(c) of Act Feb. 25, 1944, provided as follows: "The amendment made by subsection (a) [to subsec. (b)] shall be effective for all taxable years beginning after December 31, 1941. The amendment made by subsection (b) [to subsec. (f)] shall be effective with respect to all taxable years beginning after December 31, 1939."

Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, § 153(a), was made applicable to taxable years beginning after Dec. 31, 1940, by section 153(c) thereof.

Amendment of subsecs. (b), (f), and addition of subsec. (h) by Act Oct. 21, 1942, § 153(d-f), were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment by Act Oct. 21, 1942, § 172(d), adding subsec. (i), was made effective Jan. 1, 1943, applicable to all wages as defined in section 465 of I.R.C. 1939 paid on or after such date, by section 172(g) of said Act.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 made the amendments of subsecs. (a), (b), and (f) applicable only with respect to taxable years beginning after Dec. 31, 1939.

Fiscal Year Taxpayers. For taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21 1942, 4:30 p m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Jan. 3, 1951, see 1950 U.S. Code Cong.Service, p. 4027. See, also, Acts Sept 23, 1950, 1950 U.S.Code Cong. Service, p. 3053; Aug. 28, 1950, 1950 U.S. Code Cong Service, p. 3287; Nov. 8, 1945, 1945 U.S.Code Cong Service, p. 814; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

[Supplementary to Subchapter B, Part V]

§ 141. Consolidated returns

(a) **Privilege to file consolidated returns.** An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) **Regulations.** The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income- and excess-profits-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(c) **Computation and payment of tax.** In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with

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the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return; except that the tax imposed under section 15 or section 204 shall be increased by 2 per centum of the consolidated corporation surtax net income of the affiliated group of includible corporations. If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 109), the increase of 2 per centum provided in the preceding sentence shall be applied only on the amount by which the consolidated corporation surtax net income of the affiliated group exceeds the portion (if any) of the consolidated corporation surtax net income attributable to the Western Hemisphere trade corporations included in such group. For the purposes of the tax imposed by section 430, the sum of the excess profits credit and the unused excess profits credit adjustment of the affiliated group shall not be increased under the last sentence of section 431 to an amount in excess of \$25,000 for the entire group.

(d) **Definition of "affiliated group"**. As used in this section, an "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) **Definition of "includible corporation"**. As used in this section, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 101.

(2) Insurance companies subject to taxation under section 201 or 207.

(3) Foreign corporations.

(4) Corporations entitled to the benefits of section 251, by reason of receiving a large percentage of their income from sources within possessions of the United States.

(5) Corporations organized under the China Trade Act, 1922.

(6) Regulated investment companies subject to tax under Supplement Q.

(7) Any corporation described in section 449, or in section 454 (d), (f), and (g) (without regard to the exception in the initial clause of section 454), but not including such a corporation which has made and filed a consent, for the taxable year or any prior taxable year ending after June 30, 1950, to be treated as an includible corporation. Such consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary.

(8) Regulated public utilities described in section 448(d) which compute their excess profits credit under section 448 but not including any such regulated public utility which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit without regard to section 448. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the taxable year for which

filed and to each consecutive subsequent taxable year for which a consolidated return is filed.

(f) **Includible insurance companies.** Despite the provisions of paragraph (2) of subsection (e), two or more domestic insurance companies each of which is subject to taxation under the same section of this chapter shall be considered as includible corporations for the purpose of the application of subsection (d) to such insurance companies alone.

(g) **Subsidiary formed to comply with foreign law.** In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

(h) **Suspension of running of statute of limitations.** If a notice under section 272(a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(i) **Allocation of income and deductions.** For allocation of income and deductions of related trades or businesses, see section 45.

(j) **Includible regulated public utilities.** Despite the provisions of paragraph (8) of subsection (e), two or more regulated public utilities each of which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit under section 448 only, shall be considered as includible corporations for the purpose of the application of subsection (d) to such regulated public utilities alone. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed. 53 Stat. 58, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 159(a), 56 Stat. 858; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 131, Title II, § 204(c), 58 Stat. 50, 54; July 31, 1945, c. 340, § 2(c), 59 Stat. 518; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(f), 64 Stat. 918; Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 301, 64 Stat. 1217.

Historical Note

References in Text. China Trade Act, 1922, referred to in subsec. (e) (5), is classified to chapter 4 of Title 15, Commerce and Trade.

1951 Amendment. Act Jan. 3, 1951, amended section generally to permit personal service corporations and certain corporations (otherwise exempt from the excess profits tax) to make a new election as to whether they will be members of an affiliated group for taxable years ending after June 30, 1950, to add par. (8) to subsec. (e), and to add subsec. (j).

1950 Amendment. Subsec. (c) amended by Act Sept. 23 1950, which inserted second sentence to provide for an additional 2% tax.

1945 Amendment. Subsec. (c) amended by Act July 31, 1945, which struck out "\$10,000" and inserted in lieu thereof "as" in last sentence.

1944 Amendment. Subsec. (c) amended by Act Feb. 25 1944, § 204(c), which struck out "\$5,000" and inserted in lieu thereof "\$10,000".

Subsec. (e) amended by Act Feb. 25, 1944, § 131, which added par. 7.

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety and omitted subssecs. (j) and (k). Prior to such amendment section read as follows:

"Consolidated returns of railroad corporations

"(a) Privilege to file consolidated returns. An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time dur-

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ing the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936, 49 Stat. 1698, insofar as not inconsistent with this chapter) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

“(b) Regulations. The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

“(c) Computation and payment of tax. In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this chapter) prescribed prior to the date on which such return is made.

“(d) Definition of ‘affiliated group’. As used in this section an ‘affiliated group’ means one or more chains of corporations connected through stock ownership with a common parent corporation if—

“(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

“(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

“(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by

railroad. As used in this paragraph, the term ‘railroad’ includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this subsection (except in paragraph (3)) the term ‘stock’ does not include nonvoting stock which is limited and preferred as to dividends.

“(e) Foreign corporations. A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

“(f) China Trade Act corporations. A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U.S.C., Title 15, c. 4), shall not be deemed to be affiliated with any other corporation within the meaning of this section.

“(g) Corporations deriving income from possessions of United States. For the purposes of this section a corporation entitled to the benefits of section 251 by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

“(h) Subsidiary formed to comply with foreign law. In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors’ qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

“(i) Suspension of running of statute of limitations. If a notice under section 272(a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

“(j) Receivership cases. If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be entitled to the benefits of section 13(e), the affiliated group shall be entitled to the benefits of such subsection. In all other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

“(k) Allocation of income and deductions.

“For allocation of income and deductions of related trades or businesses, see section 45.”

Effective Date of 1951 Amendment. Section 301 of Act Jan. 3, 1951, provided in part that the amendment of this sec-

tion should be effective with respect to taxable years ending after June 30, 1950.

Effective Date of 1950 Amendment. Amendment of section by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1950, see note set out under section 13 of I.R.C.1939.

Effective Date of 1945 Amendment. Section 2(d) of Act July 31, 1945, made section applicable to taxable years beginning after Dec. 31, 1945, and to taxable years beginning in 1945 and ending in 1946.

Effective Date of 1944 Amendment. Section 201 of Act Feb. 25, 1944, provided that the amendment of subsec. (c) was made applicable to taxable years beginning after Dec. 31, 1943.

Section 101 of Act Feb. 25, 1944, provided that the amendment of subsec. (e) was made applicable to taxable years beginning after Dec. 31, 1943.

Section 101 of Act Oct. 21, 1942, provided that amendment of section was made applicable to taxable years beginning after Dec. 31, 1941.

Application of Former Subsec. (j). Act June 29, 1939, c. 247, Title II, § 210 (b), 53 Stat. 866, provided: "[Former] Section 141(j) of the Internal Revenue Code [1939] (relating to affiliated corporations in bankruptcy or receivership) shall not apply with respect to a taxable year beginning after December 31, 1939", and was made applicable only with respect to taxable years beginning after Dec. 31, 1939, by section 229 of said Act.

Withdrawal of Consent Provided in Subsec. (e) (7); Effect. Act Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title VI,

§ 613, 65 Stat. 568, provided that: "If an affiliated group making a consolidated return with respect to the first taxable year of the group ending after June 30, 1950, included a corporation described in section 454(f) of the Internal Revenue Code [section 454(f) of I.R.C.1939] pursuant to the consent provided in section 141(e) (7) of such code [section 141(e) (7) of I.R.C.1939], such corporation may withdraw such consent at any time within ninety days after the enactment of this Act [Oct. 20, 1951]. If such consent is withdrawn under the preceding sentence, the tax liability of the affiliated group and its several members for the taxable year shall be determined, assessed, and collected as if such corporation had never joined in the making of the consolidated return."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States." Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p.m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p.m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title I, § 109, 56 Stat. 803

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 142. Fiduciary returns

(a) **Requirement of return.** Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a gross income for the taxable year of \$600 or over;

(2) Every estate the gross income of which for the taxable year is \$600 or over;

(3) Every trust the net income of which for the taxable year is \$100 or over, or the gross income of which for the taxable year is \$600 or over, regardless of the amount of net income;

(4) Every estate or trust of which any beneficiary is a nonresident alien.

(b) **Joint fiduciaries.** Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that

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he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) **Law applicable to fiduciaries.** Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals. 53 Stat. 60, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 7(b), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 112(b), 55 Stat. 696; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 131(c) (2), 56 Stat. 828; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 11(c), 58 Stat. 241; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(c) (2), 62 Stat. 114.

Historical Note

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948, which struck out \$500 wherever appearing and inserted \$600 to accommodate the increased exemptions under section 25(b) of I.R.C.1939.

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which struck out pars. (1)-(5) and inserted new pars. (1)-(4).

1942 Amendment. Subsec. (a) amended by Act Oct. 21, 1942, which substituted "\$500" for "\$750" in pars. (1), (3) and (4), and "\$1200" for "\$1500" in par. (2).

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941.

1940 Amendment. Subsec. (a) amended by Act June 25, 1940.

Effective Date of 1948 Amendment. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 53(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was

made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of Internal Revenue Code], shall be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided that: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong.Service, p. 1056.

§ 143. Withholding of tax at source

(a) Tax-free covenant bonds

(1) **Requirement of withholding.** In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this chapter upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal

to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 30 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 30 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 30 per centum. As used in this subsection the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(2) **Benefit of credits against net income.** Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the exemptions provided in section 25(b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

(3) **Income of obligor and obligee.** The obligor shall not be allowed a deduction for the payment of the tax imposed by this chapter, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(b) **Nonresident aliens.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 30 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the cor-

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poration has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent: *Provided further*, That the deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within the provisions of subsection (a) (1) of this section were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ per centum of the interest, shall not exceed the rate of 27½ per centum per annum. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals. In respect of the compensation for services performed by nonresident alien individuals brought into the United States under the authority of the War Manpower Commission for temporary employment essential to the war effort and subject to withholding under this subsection, the deduction and withholding shall be at the rate of 10 per centum, and there shall be no deduction or withholding under section 1622. As used in this subsection the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(c) **Return and payment.** Every person required to deduct and withhold any tax under this section shall, on or before March 15 of each year, make return thereof and pay the tax to the collector designated in section 53(b). Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

(d) **Income of recipient.** Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) **Tax paid by recipient.** If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(f) **Refunds and credits.** Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(g) Cross reference

For definition of "withholding agent", see section 3797(a) (16).

(h) **Withholding on certain foreign tax-exempt organizations.** In the case of income of a foreign organization subject to the tax imposed by section 421(a), the provisions of this section and section 144 shall apply to rents includible under section 422 in computing its unrelated business net income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary. 53 Stat. 60, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 5(a), Title II, § 202, 54 Stat. 519, § 20; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, §§ 107(a), (b), 109(a), 55 Stat. 695; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 108(a), (b), 160(a) (1, 2), 56 Stat. 808, 860,

861; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 132(a), 58 Stat. 50; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 10(d), 58 Stat. 239; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (5), 59 Stat. 558; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 219, 221 (e), Title III, Pt. I, § 301(c) (4), 64 Stat. 944, 945, 953.

Historical Note

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 221(e), to define "nonresident alien individual".

Subsec. (b) amended by Act Sept. 23, 1950, § 221(e), to define "nonresident alien individual".

Subsec. (c) amended by Act Sept. 23, 1950, § 219, to require the withholding agent to make return of the tax on or before Mar. 15 of each year and to pay the tax on or before June 15.

Subsec. (h) added by Act Sept. 23, 1950, § 301(c) (4).

1945 Amendment. Subsec. (a) (2) amended by Act Nov. 8, 1945, § 102(b) (5), which struck out "normal tax exemption provided in section 25(a) (3) and the surtax".

1944 Amendments. Subsec. (a) (2) amended by Act May 29, 1944, which struck out "credits provided in section 25(b)" preceding semi-colon, and inserted in lieu thereof "normal tax exemption provided in section 25(a) (3) and the surtax exemption provided in section 25(b)".

Subsec. (b) amended by Act Feb. 25, 1944, which added last sentence.

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942, §§ 108(a), 160(a) (1), which substituted "30 per centum" in lieu of "27½ per centum" and struck out "and not having any office or place of business therein", wherever occurring therein.

Subsec. (b) amended by Act Oct. 21, 1942, §§ 108(a, b), 160(a) (2), which substituted "30 per centum" in lieu of "27½ per centum" wherever occurring therein; inserted before the period at the end of the first sentence the proviso clause placing a limitation on rate of withholding in certain cases; and struck out "and not having any office or place of business therein", and "or has an office or place of business therein".

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, §§ 107(a), 109(a).

Subsec. (b) amended by Act Sept. 20, 1941, §§ 107(a), 109(a).

Subsec. (h), relating to rates until January 1945, repealed by Act Sept. 20, 1941.

1940 Amendment. Act June 25, 1940, § 5(a), struck out "10 per centum" wherever it occurred and inserted in lieu thereof "15 per centum".

Subsec. (h) added by Act June 25, 1940, § 202.

Effective Date of 1950 Amendment. Amendment of subsecs. (a) (1) and (b)

by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C.1939.

Amendment of subsec. (c) by Act Sept. 23, 1950, as applicable only with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Effective Date of 1945 Amendment. Section 102(c) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1948, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendments. Section 2 of Act May 29, 1944, provided that the amendment of subsec. (a) (2) was made applicable to taxable years beginning after Dec. 31, 1943.

Section 132(b) of Act Feb. 25, 1944, provided that the amendment of subsec. (b) was made effective as follows: "The amendment made by subsection (a) shall be applicable to all compensation paid on or after the tenth day after the date of the enactment of this Act [Feb. 25, 1944, 12:49 p. m., E. W. T.]"

Effective Date of 1942 Amendments. Section 108(c) of Act Oct. 21, 1942, provided that the amendment of subsecs. (a) and (b) by Act Oct. 21, 1942, § 108(a, b), was made applicable to the period beginning with the tenth day after Oct. 21, 1942, 4:30 p. m., E. W. T.

Section 160(a) (4) of Act Oct. 21, 1942, provided that the amendments of subsecs (a) and (b) by Act Oct. 21, 1942, § 160(a) (1, 2), were made applicable to the period beginning with the tenth day after Oct. 21, 1942, 4:30 p. m., E. W. T.

Section 101 of Act Oct. 21, 1942, provided that the amendment of subsec. (b) by Act Oct. 21, 1942, § 108(b), was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendments. Section 107(c) of Act Sept. 20, 1941, provided that the amendment of this section by Act Sept. 20, 1941, § 107(a, b) was made applicable only with respect to the period beginning the tenth day after the date of enactment of said Act.

Section 118 of Act Sept. 20, 1941, provided that the amendment by Act Sept. 20, 1941, § 109(a) was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1940 Amendment. Section 5(c) of Act June 25, 1940, provid-

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ed that the amendment of this section was made effective on June 26, 1940.

Abolition of Commission and Transfer of Functions. The War Manpower Commission was terminated and the functions thereof, except the Procurement and Assignment Service, transferred to the Department of Labor by Ex.Ord. No. 9617, Sept. 19, 1945, 10 F.R. 11929, set out as a note under section 601 of Appendix to Title 50, War and National Defense.

Functions of said Procurement and Assignment Service were transferred to the Federal Security Administrator by said Ex.Ord.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1944—Feb. 25, 1944, 12:49 p. m., E. W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E. S.T., c. 412, Title I, § 108, 55 Stat. 605.

1940—June 25, 1940, 11:45 a. m., E. S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong Service, p. 3053. See, also, Acts Nov. 8, 1945, 1945 U.S.Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 144. Payment of corporation income tax at source

In the case of foreign corporations subject to taxation under this chapter not engaged in trade or business within the United States, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 30 per centum thereof, except that in the case of corporations organized under the laws of any country in North, Central, or South America, or in the West Indies, or of Newfoundland such rate with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection. 53 Stat. 62, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 5(b), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, §§ 107(a), 109(a), 55 Stat. 695; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 108(a), 160(a) (3), 56 Stat. 808, 861.

Historical Note

1942 Amendment. Words "and not having any office or place of business therein" following the words "trade or business within the United States" were struck out by Act Oct. 21, 1942, § 160(a) (3). Figure "30" was substituted for "27½" by section 108(a) of said Act.

1941 Amendment. Act Sept. 20, 1941, § 107(a), substituted "27½ per centum" for "15 per centum" wherever occurring.

Act Sept. 20, 1941, § 109(a), substituted "any country in North, Central, or South America, or in the West Indies, or of Newfoundland" for "a contiguous country".

1940 Amendment. Act June 25, 1940, struck out "except that in the case of dividends the rate shall be 10 per centum, and" after "a tax equal to 15 per centum thereof" and struck out "of 10 per centum" after "such rate of".

Effective Date of 1942 Amendment. Section 108(c) of Act Oct. 21, 1942, provided that the amendment by Act Oct. 21, 1942, § 108(a), was made applicable to the period beginning with the tenth day after Oct. 21, 1942, 4:30 p. m., E. W. T.

Section 160(a) (4) of Act Oct. 21, 1942, provided that the amendment by Act Oct. 21, 1942, § 160(a) (3), was made applicable to the period beginning with the tenth day after Oct. 21, 1942, 4:30 p. m., E. W. T.

Effective Date of 1941 Amendment. Section 107(c) of Act Sept. 20, 1941, provided that the amendment by Act Sept. 20, 1941, § 107(a), was made applicable only with respect to the period beginning the tenth day after the date of enactment of said Act.

Section 118 of Act Sept. 20, 1941, provided that the amendment by Act Sept. 20,

1941, § 109(a), was made applicable only with respect to taxable years beginning after Dec. 31, 1940

Effective Date of 1940 Amendment. Section 5(c) of Act June 25, 1940, provided that the amendment of this section should be effective as of June 26, 1940.

Increase of Rate After June 30, 1940, and Before July 1, 1945. Rate of 15 per centum, formerly provided for in this section, was increased to 16½ per centum by former section 143(h) of I.R.C. 1939.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided that "No amendment made by this title [sections 101-172,

181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States"

Similar provisions were contained in the following Acts:

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695

1940—June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 145. Penalties

(a) **Failure to file returns, submit information, or pay tax.** Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) **Failure to collect and pay over tax, or attempt to defeat or evade tax.** Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) **Repealed.** Aug. 27, 1949, c. 517, § 4(b), 63 Stat. 668.

(d) **Person defined.** The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(e) **[Failure to file amended estimated tax return.]**¹ In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the penalties prescribed by this section shall not be applicable if the taxpayer failed to meet the requirements of section 294 (d) (2) (relating to substantial underestimate of estimated tax), by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950.

(f) **[Failure to take into account new tax increases.]**¹ In the case of taxable years beginning prior to November 1, 1951, and ending after October 31, 1951, the penalties prescribed by this section for willful failure to make declarations of, or pay, estimated tax shall not be applicable to a failure to take into account the increase in rates of tax imposed on individuals by the Revenue Act of 1951.

(g) **[Cross references.]**¹

For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section

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340. 53 Stat. 62, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 136(b, c), 172(f) (3), 56 Stat. 836, 893; June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(c), 57 Stat. 144; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 6(b) (6), 58 Stat. 234; Aug. 27, 1949, c. 517, § 4(b), 63 Stat. 668; Jan. 2, 1951, c. 1195, § 1, 64 Stat. 1136; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 103(a), 65 Stat. 465.

1 Subsec. was enacted without a catchline, which has been supplied by editor.

Historical Note

References in Text. Section 101 of Revenue Act of 1950, referred to in subsec. (e), is classified to sections 11 and 12(b), (c), (f) of I.R.C.1939.

1951 Amendment. Subsec. (e) added by Act Jan. 2, 1951.

Subsec. (f) added by Act Oct. 20, 1951.

Subsec. (g), relettered by Acts Oct. 20, 1951, and Jan. 2, 1951. Act Oct. 20, 1951 relettered former subsec. (f) to be (g). Act Jan. 2, 1951, relettered former subsec. (e) to be (f).

1949 Amendments. Subsec. (c) repealed by Act Aug. 27, 1949.

1944 Amendment. Subsec. (e) amended by Act May 29, 1944, which omitted subd. number "(1)" preceding "For penalties", and subd. (2) entirely by eliminating the second paragraph which was added by Act Oct. 21, 1942 as set out post.

1943 Amendment. Subsec. (a) amended by Act June 9, 1943, which inserted "or declaration", and "estimated tax or" wherever appearing.

1942 Amendment. Subsec. (c) added by Act Oct. 21, 1942, § 136(b). Former subsecs. (c) and (d) were redesignated (d) and (e) respectively, by section 136(c) of said Act.

Subsec. (e) formerly (d), amended by Act Oct. 21, 1942, § 172(f) (3) which numbered first par. (1), and added par. (2).

Effective Date of 1951 Amendment. Amendment as applicable only with respect to taxable years beginning after Oct. 31, 1951, and to taxable years beginning on Jan. 1, 1951, and ending on Dec. 31, 1951, see note set out under section 12 of I.R.C.1939.

Effective Date of 1949 Amendment. The repeal of subsec. (c) as applicable with respect to any return, statement, or document filed after Aug. 27, 1949, see note set out under section 3809 of I.R.C. 1939.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944 made the amendment of subsec. (e) applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943 made the amendment of subsec. (a) effective with respect to taxable years beginning after December 31, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 made the amendment of subsec. (c) applicable to

taxable years beginning after Dec. 31, 1941.

Amendment of subsec. (d) by Act Oct. 21, 1942, § 172(f), adding par. (2), was made effective Jan. 1, 1943, applicable to all wages (as defined in Part II of Subchapter D) paid on or after such date, by section 172(g) of said Act.

Computation of Tax in Case of Certain Joint Returns. Effective date of 1951 amendments with respect to computation of tax in case of certain joint returns, see note set out under section 12 of I.R.C.1939.

Jury Trial in Action to Recover Taxes. Section 3 of Act July 16, 1952, c. 892, 66 Stat. 735, provided that:

"(a) Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 [both set out following section 1332-15 of Title 5] shall be construed to impair any right or remedy, including trial by jury, to recover any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

"(b) For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue shall be deemed to refer to the officer whose act or acts referred to in subsection (a) gave rise to such action. The venue of any such action shall be the same as under existing law."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 916, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also, Acts Jan. 2, 1951, 1950 U.S. Code Cong. Service, p. 4259; May 29, 1944, 1944 U.S. Code Cong.Service, p. 1056.

§ 146. Closing by commissioner of taxable year

(a) Tax in jeopardy

(1) **Departure of taxpayer or removal of property from United States.** If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design.

(2) **Corporation in liquidation.** If the Commissioner finds that the collection of the tax of a corporation for the current or last preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the last preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) **Security for payment.** A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress.

(c) **Same—exemption from section.** If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(d) **Citizens.** In the case of a citizen of the United States or of a possession of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(e) **Departure of alien.** No alien shall depart from the United States unless he first procures from the collector or agent in charge a certificate

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that he has complied with all the obligations imposed upon him by the income, war-profits, and excess-profits tax laws.

(f) **Addition to tax.** If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 6 per centum per annum from the time the tax became due. 53 Stat. 63.

§ 147. Information at source

(a) **Payments of \$600 or more.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148(a) or 149), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) **Returns regardless of amount of payment.** Such returns may be required, regardless of amounts, (1) in the case of payments of interest, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(c) **Recipient to furnish name and address.** When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) **Repealed.** Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 116(a), 55 Stat. 698, 53 Stat. 64, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 7(c), 54 Stat. 520; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 112(c), 116(a), (b), 55 Stat. 697, 698; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 131(c) (3), 56 Stat. 828; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(c) (3), 62 Stat. 114; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 333, 65 Stat. 506.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, to strike out "interest" preceding "rent, salaries".

Subsec. (b) amended by Act Oct. 20, 1951, to omit provisions relating to payments of interest upon obligations of the United States or any agency or instrumentality thereof.

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948 which struck out \$500 wherever appearing and inserted \$600 to accommodate the increased exemptions under section 25(b) of I.R.C 1939.

1942 Amendment. Subsec. (a) amended by Act Oct. 21, 1942, which substituted "\$500" for "\$750".

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, § 112(c), which substituted "\$750" for "\$800" wherever occurring therein.

Subsec. (b) amended by Act Sept. 20, 1941, § 116(b), which renumbered former clause "(2)" to be "3" and added a new clause "2".

Subsec. (d) repealed by Act Sept. 20, 1941. Prior to said repeal, subsec. read as follows: "(d) Obligations of United States.—The provisions of this section shall not apply to the payment of interest on obligations of the United States."

1940 Amendment. Subsec. (a) amended by Act June 25, 1940, which substituted "\$800" for "\$1,000" wherever occurring therein.

Effective Date of 1948 Amendment. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Effective Date of 1942 Amendment. Act Oct. 21, 1942 was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, § 112(c) which amended subsec. (a), was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Act Sept. 20, 1941, § 116(a), (b) which repealed subsec. (d) and amended subsec. (b) took effect upon the day after the date of enactment of that Act, by virtue of section 116(c) thereof.

Effective Date of 1940 Amendment. Act June 25, 1940 provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act] except the amendments made by section 5 [sections 143, 144 of Internal Revenue Code], shall be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Treaty Obligations. Section 615 of Act Oct. 20, 1951 provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Apr. 2, 1948, see 1948 U.S.Code Cong.Service, p. 541.

§ 148. Information by corporations

(a) **Dividend payments.** Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

(b) **Profits declared as dividends.** Every corporation shall, when required by the Commissioner, furnish him a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Commissioner may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Commissioner may specify.

(c) **Accumulated earnings and profits.** When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated earnings and profits and the names and addresses of the individuals or share holders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.

(d) **Contemplated dissolution or liquidation.** Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Commissioner shall, with the approval of the Secretary, by regulations prescribe.

(e) **Distributions in liquidation.** Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its distributions in liquidation, stating the name and address of each shareholder, the number and class of shares owned by him, and the amount paid to him or, if the distribution is in property other than money,

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the fair market value (as of the date the distribution is made) of the property distributed to him.

(f) **Patronage dividends.** Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall render a correct return stating (1) the name and address of each patron to whom it has made such allocations amounting to \$100 or more during the calendar year, and (2) the amount of such allocations to each patron. If required by the Secretary, any such corporation shall render a correct return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This subsection shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) exempt from taxation under section 101 (10) or (11) or in the case of any corporation subject to a tax imposed by supplement G. 53 Stat. 65, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 407, 53 Stat. 884; Aug. 27, 1949, c. 517, § 5, 63 Stat. 668; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 314(c), 65 Stat. 492.

Historical Note

1951 Amendment. Subsec. (f) added by Act Oct. 20, 1951, § 314(c).

1949 Amendment. Former subsec. (f) related to compensation of officers and employees and was repealed by Act Aug. 27, 1949.

1939 Amendment. Subsec. (f), last sentence, as added by Act June 29, 1939.

Effective Date of 1951 Amendment. Addition of subsec. (f) made applicable to calendar year 1951 and subsequent calendar years by section 314(d) of Act Oct. 21, 1951.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

§ 149. Returns of brokers

Every person doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid. 53 Stat. 65.

§ 150. Collection of foreign items

All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this chapter as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both. 53 Stat. 65.

§ 151. Foreign personal holding companies

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.
53 Stat. 66.

§ 152. Pan-American trade corporations

If a domestic corporation engaged in the active conduct of a trade or business within the United States (hereinafter referred to as the "parent corporation") owns directly 100 per centum of the capital stock of one or more domestic corporations each of which is engaged solely in the active conduct of a trade or business in Central or South America (hereinafter referred to as a Pan-American trade corporation), such corporations (including the "parent corporation") shall be deemed to be an affiliated group of corporations within the meaning of section 141 of this chapter, provided that the following conditions are satisfied:

(1) At least 80 per centum of the gross income for the taxable year of the parent corporation is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(2) At least 90 per centum of the gross income for the taxable year of each of the Pan-American trade corporations is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(3) No part of the gross income for the taxable year of any of the Pan-American trade corporations is derived from sources within the United States. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 225, 53 Stat. 880.

Historical Note

Effective Date. Section 229 of Act June 29, 1939 made section applicable only with respect to taxable years beginning after Dec. 31, 1939.

4:30 p. m., E.W.T., c. 619, Title I, § 159 (b), 56 Stat. 860, provided that this section "shall not apply with respect to any taxable year beginning after December 31, 1941."

Inapplicability to Taxable Years Beginning After 1941. Act Oct. 21, 1942,

§ 153. Information required from certain tax-exempt organizations and certain trusts

(a) **Certain tax-exempt organizations.** Every organization described in section 101(6) which is subject to the requirements of section 54(f) shall furnish annually information, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

(1) its gross income for the year,

(2) its expenses attributable to such income and incurred within the year,

(3) its disbursements out of income within the year for the purposes for which it is exempt,

(4) its accumulation of income within the year,

(5) its aggregate accumulations of income at the beginning of the year,

(6) its disbursements out of principal in the current and prior years for the purposes for which it is exempt, and

(7) a balance sheet showing its assets, liabilities and net worth as of the beginning of such year.

(b) **Trusts claiming charitable, etc., deductions under section 162(a).** Every trust claiming a charitable, etc., deduction under section 162(a)

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for the taxable year shall furnish information with respect to such taxable year, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

(1) the amount of the charitable, etc., deduction taken under section 162(a) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),

(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 162(a) have been taken in prior years,

(3) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

(5) the total income of the trust within such year and the expenses attributable thereto, and

(6) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

This subsection shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

(c) **Information available to the public.** The information required to be furnished by subsections (a) and (b), together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe.

(d) **Penalties.** In the case of a willful failure to furnish the information required under this section, the penalties provided in section 145(a) shall be applicable. Added Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title III, Pt. IV, § 341(a), 64 Stat. 960, amended May 17, 1951, c. 93, 65 Stat. 43.

Historical Note

1951 Amendment. Subsec. (b) amended by Act May 17, 1951, which added last par. to relieve trusts under which all trust net income must be distributed currently each year to beneficiary from the obligation of filing the special return required by this subsec.

Effective Date of 1951 Amendment. Act May 17, 1951, provided in part that the amendment of subsec. (b) by said Act May 17, 1951 should be effective with respect to taxable years beginning after Dec. 31, 1949.

Effective Date. Section 341(b) of Act Sept. 23, 1950, provided that this section should be applicable with respect to taxable years beginning after Dec. 31, 1949.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 154. Income taxes of members of armed forces upon death

In the case of any individual who dies after June 24, 1950, and prior to January 1, 1955, while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 22 (b) (13)) or as a result of wounds, disease, or injury incurred while so serving—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect

to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. Added Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 334, 65 Stat. 507, amended Aug. 15, 1953, c. 512, Title I, § 104, 67 Stat. 616.

Historical Note

1953 Amendment. Act Aug. 15, 1953 amended section by extending for one year, until Jan. 1, 1955, the period of abatement of income taxes of deceased members of the Armed Forces.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

SUPPLEMENT E.—ESTATES AND TRUSTS

§ 161. Imposition of tax

(a) **Application of tax.** The taxes imposed by this chapter (other than the tax imposed by subchapter E, relating to tax on self-employment income) upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) **Computation and payment.** The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

(c) Cross reference

For return made by beneficiary, see section 142.

53 Stat. 66, amended Aug. 28, 1950, c. 809, Title II, § 208(d) (7), 64 Stat. 545.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Aug. 28, 1950, which inserted "(other than * * * self-employment income)" immediately following "The taxes imposed by this chapter".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287.

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§ 162. Net income

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) Subject to the provisions of subsection (g), there shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit. Where any amount of the income so paid or set aside is attributable to gain from the sale or exchange of capital assets held for more than six months, proper adjustment of the deduction otherwise allowable under this subsection shall be made for any deduction allowable to the trust under section 23 (ee);

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(d) Rules for application of subsections (b) and (c).¹ For the purposes of subsections (b) and (c)—

(1) Amounts distributable out of income or corpus. In cases where the amount paid, credited, or to be distributed can be paid, credited, or distributed out of other than income, the amount paid, credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be

distributed to the legatee, heir, or beneficiary bears to the aggregate of such amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable year of the estate or trust. For the purposes of this paragraph "distributable income" means either (A) the net income of the estate or trust computed with the deductions allowed under subsections (b) and (c) in cases to which this paragraph does not apply, or (B) the income of the estate or trust minus the deductions provided in subsections (b) and (c) in cases to which this paragraph does not apply, whichever is the greater. In computing such distributable income the deductions under subsections (b) and (c) shall be determined without the application of paragraph (2).

(2) Amounts distributable out of income of prior period. In cases, other than cases described in paragraph (1), if on a date more than 65 days after the beginning of the taxable year of the estate or trust, income of the estate or trust for any period becomes payable, the amount of such income shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed to the extent of the income of the estate or trust for such period, or if such period is a period of more than 12 months, the last 12 months thereof.

(3) Distributions in first 65 days of taxable year.

(A) General rule. If within the first 65 days of any taxable year of the estate or trust, income of the estate or trust, for a period beginning before the beginning of the taxable year, becomes payable, such income, to the extent of the income of the estate or trust for the part of such period not falling within the taxable year or, if such part is longer than 12 months, the last 12 months thereof, shall be considered, paid, credited, or to be distributed on the last day of the preceding taxable year. This subparagraph shall not apply with respect to any amount with respect to which subparagraph (B) applies.

(B) Payable out of income or corpus. If within the first 65 days of any taxable year of the estate or trust, an amount which can be paid at intervals out of other than income becomes payable, there shall be considered as paid, credited, or to be distributed on the last day of the preceding taxable year the part of such amount which bears the same ratio to such amount as the part of the interval not falling within the taxable year bears to the period of the interval. If the part of the interval not falling within the taxable year is a period of more than 12 months, the interval shall be considered to begin on the date 12 months before the end of the taxable year.

(4) Excess deductions. If for any taxable year of an estate or trust the deductions allowed under subsection (b) or (c) solely by reason of paragraph (2) or (3) (A) in respect of any income which becomes payable to a legatee, heir, or beneficiary exceed the net income of the estate or trust for such year, computed without such deductions, the amount of such excess shall not be included in computing the net income of such legatee, heir, or beneficiary under subsection (b) or (c). In cases where the income deductible solely by reason of paragraph (2) or (3) (A) becomes payable to two or more legatees, heirs, or beneficiaries, the benefit of such exclusion shall be divided among such legatees, heirs, and beneficiaries, in the proportions in which they share in such income. In any case where the estate or trust is entitled to a deduction by reason of paragraph (1), in the determination of the net income of the estate or trust for the purposes of this paragraph the amount of such deduction shall be determined with the application of paragraph (3) (A).

(e) Amounts allowable under section 812(b) as a deduction in computing the net estate of a decedent shall not be allowed as a deduction under section 23, except subsection (w), in computing the net income of the estate unless there is filed, within the time and in the manner and

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form prescribed by the Commissioner, a statement that the items have not been claimed or allowed as deductions under section 812(b) and a waiver of the right to have such items allowed at any time as deductions under section 812(b).

(f) The standard deduction provided in section 23(aa) shall not be allowed.

(g) Rules for application of subsection (a) in the case of trusts.

(1) **Trade or business income.** In computing the deduction allowable under subsection (a) to a trust for any taxable year beginning after December 31, 1950, no amount otherwise allowable under subsection (a) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its Supplement U business income for such year. As used in this paragraph the term "Supplement U business income" means an amount equal to the amount which, if such trusts were exempt under section 101(6) from taxation, would be computed as its unrelated business net income under section 422 (relating to income derived from certain business activities and from certain leases).

(2) **Operations of trusts.**

(A) **Limitation on charitable, etc., deduction.** The amount otherwise allowable under subsection (a) as a deduction shall not exceed 15 per centum of the net income of the trust (computed without the benefit of subsection (a)) if the trust has engaged in a prohibited transaction, as defined in subparagraph (B) of this paragraph.

(B) **Prohibited transactions.** For the purposes of this paragraph the term "prohibited transaction" means any transaction after July 1, 1950, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in subsection (a)—

(i) lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to;

(ii) pays any compensation from such income or corpus, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(iii) makes any part of its services available on a preferential basis to;

(iv) uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth, from;

(v) sells any substantial part of the securities or other property comprising such income or corpus, for less than an adequate consideration in money or money's worth, to; or

(vi) engages in any other transaction which results in a substantial diversion of such income or corpus to;

the creator of such trust; any person who has made a substantial contribution to such trust; a member of the family (as defined in section 24(b) (2) (D)) of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of 50 per centum or more of the total combined voting power of all classes of stock entitled to vote or 50 per centum or more of the total value of shares of all classes of stock of the corporation.

(C) **Taxable years affected.** The amount otherwise allowable under subsection (a) as a deduction shall be limited as provided in subparagraph (A) only for taxable years subsequent to the taxable year during which the trust is notified by the Secretary that it has engaged in such transaction, unless such trust entered into such prohibited transaction with the

purpose of diverting such corpus or income from the purposes described in subsection (a), and such transaction involved a substantial part of such corpus or income.

(D) **Future charitable, etc., deductions of trusts denied deduction under subparagraph (C).** If the deduction of any trust under subsection (a) has been limited as provided in this paragraph, such trust, with respect to any taxable year following the taxable year in which notice is received of limitation of deduction under subsection (a), may, under regulations prescribed by the Secretary, file claim for the allowance of the unlimited deduction under subsection (a), and if the Secretary, pursuant to such regulations, is satisfied that such trust will not knowingly again engage in a prohibited transaction, the limitation provided in subparagraph (A) shall not be applicable with respect to taxable years subsequent to the year in which such claim is filed.

(E) **Disallowance of certain charitable, etc., deductions.** No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under sections 23(c) (2), 23(q) (2), 162(a), 505(a) (2), 812(d), 861(a) (3), 1004(a) (2) (B), or 1004(b) (2) or (3), shall be allowed as a deduction if made in trust and, in the taxable year of the trust in which the gift or bequest is made, the deduction allowed the trust under subsection (a) is limited by subparagraph (A). With respect to any taxable year of a trust in which such deduction has been so limited by reason of entering into a prohibited transaction with the purpose of diverting such corpus or income from the purposes described in subsection (a), and such transaction involved a substantial part of such income or corpus, and which taxable year is the same, or prior to the, taxable year of the trust in which such prohibited transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 24(b) (2) (D)) was a party to such prohibited transaction.

(F) **Definition.** For the purposes of this paragraph the term "gift or bequest" means any gift, contribution, bequest, devise, legacy, or transfer.

(G) **Cross reference.** For disallowance of certain charitable, etc., deductions otherwise allowable under subsection (a), see section 3813.

(4) **Accumulated income.** If the amounts permanently set aside, or to be used exclusively, for the charitable and other purposes described in subsection (a) during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(A) are unreasonable in amount or duration in order to carry out such purposes of the trust; or

(B) are used to a substantial degree for purposes other than those described in subsection (a); or

(C) are invested in such a manner as to jeopardize the interests of the religious, charitable, scientific, etc., beneficiaries,

the amount otherwise allowable under subsection (a) as a deduction shall be limited to the amount actually paid out during the taxable year and shall not exceed 15 per centum of the net income of the trust (computed without the benefit of subsection (a)). 53 Stat. 66, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 111(b, c), 161(a), 56 Stat. 809, 861; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 133(a), 58 Stat. 50; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 9(b) (1), 58 Stat. 237; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, § 321, 64 Stat. 954; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 322 (c) (5), 65 Stat. 500.

¹ So in original. Subsecs. (a)-(c), (e), and (f) were enacted without a catchline.

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Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, adding second sentence.

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, § 321(b), which substituted "Subject to the provisions of subsection (g), there shall be allowed as a deduction" in lieu of "There shall be allowed as a deduction".

Subsec. (g) added by Act Sept. 23, 1950, § 321(a).

1944 Amendments. Subsec. (d) amended by Act Feb. 25, 1944, which added par. 4.

Subsec. (f) added by Act May 29, 1944.

1942 Amendment. Subsecs. (b) and (c) amended and subsecs. (d) and (e) added by Act Oct. 21, 1942.

Effective Date of 1951 Amendment. Amendment of subsec. (a) made applicable only with respect to taxable years beginning on or after Oct. 20, 1951, by section 322(d) of Act Oct. 20, 1951.

Effective Date of 1950 Amendment. Section 322 of Act Sept. 23, 1950, provided that: "The amendments made by this part [amending subsecs. (a) and (g) of this section] shall be applicable only with respect to taxable years beginning after December 31, 1950, except that subsection (g) (2) (E) of section 162 of the Internal Revenue Code, [subsec. (g) (2) (E) of this section] added by section 321 (a) of this Act, shall apply only with respect to gifts or bequests (as defined in section 162(g) (2) (F) of the Internal Revenue Code [subsec. (g) (2) (F) of this section]) made on or after January 1, 1951."

Effective Date of 1944 Amendments. Amendment adding subsec. (f), made applicable to taxable years beginning after Dec. 31, 1943, by section 2 of Act May 29, 1944.

Amendment of subsec. (d) made effective by section 133(b) of Act Feb. 25, 1944, as follows: "The amendment made by subsection (a) shall be effective as if it were a part of section 111 of the Revenue Act of 1942 [sections 22, 162, 164 and notes thereto of I.R.C.1939] on the date of its enactment. [Oct. 21, 1942, 4:30 p. m., E.W.T.]"

Effective Date of 1942 Amendment. Amendment of subsecs. (b-d) by Act Oct. 21, 1942, § 111(b, c), was made effective by section 111(e) thereof as follows: "(e) The amendments made by this section [to sections 22(b) (3), 162 (b-d) and 164] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that in the case of income paid, credited or to be distributed or amounts paid, credited or to be distributed by an estate or trust the amendments made by this section shall be applicable only with respect to such income and such amounts paid,

credited or to be distributed on or after the beginning of the first taxable year of the estate or trust, as the case may be, beginning after December 31, 1941."

Amendment by Act Oct. 21, 1942, § 161 (a), adding subsec. (e), was made effective by section 161(b) thereof as follows: "(b) The amendment made by subsection (a) [to subsec. (e)] insofar as it relates to section 23(a) (2) shall be applicable with respect to the same taxable years and the same revenue laws as the amendments made by section 121 (relating to non-trade or non-business deductions) of this Act [sections 23(a) (1) and 24(a) (5) and notes thereunder]; and the other provisions shall be applicable to taxable years beginning after December 31, 1941."

Abatement of Tax on Certain Trusts for Members of Armed Forces Dying in Service. Section 345 of Act Oct. 21, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 345, 65 Stat. 517, provided that:

"In the case of a trust which accumulated income for a beneficiary who died on or after December 7, 1941, and before January 1, 1943, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, there shall be allowed as a deduction in computing the net income of such trust (in addition to other deductions allowable under sections 23 and 162 of the Internal Revenue Code) [sections 23 and 162 of I.R.C.1939] income of the trust for any taxable year (before diminution for income tax) which was accumulated for such beneficiary if—

"(1) the income accumulated was for a taxable year of the trust which ended with or within a taxable year (ending on or after December 7, 1941) of such beneficiary during any part of which he was a member of such military or naval forces, or, in the case of the taxable year of the trust during which such beneficiary died, the income accumulated was for the period in such taxable year prior to the death of such beneficiary; and

"(2) the amount of such accumulated income was, without regard to this section, taxable to the trust, and

"(3) the income for such taxable year accumulated for the beneficiary, if not distributed to him prior to his death, was payable by the trust at or after his death only to his estate, spouse, or lineal ancestors or descendants."

Refund or credit of overpayment resulting from application of section 345 of Revenue Act of 1951. Act Aug. 9, 1953, c. 670, 69 Stat. 607, provided: "That if refund or credit of an overpayment resulting from the application of section 345 of the Revenue Act of 1951 [set out as a note under this section] (relating to abatement of tax on certain trusts for members of Armed Forces dying in service) is prevented on the date of the enactment of

this Act [August 9, 1955] by the operation of any law or rule of law (other than section 3760) of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after the date of the enactment of this Act [August 9, 1955]. No interest shall be allowed or paid on any overpayment if refund or credit of such overpayment would not be allowable but for this Act."

Treaty Obligations. Section 615 of Act Oct 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty

obligation of the United States." Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1731. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong Service, p. 3053; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 163. Credits against net income

(a) Credits of estate or trust.

(1) For the purpose of the normal tax and the surtax, an estate shall be allowed, in lieu of the exemptions under section 25(b) (1), a credit of \$600 against net income, and a trust shall be allowed, in lieu of the exemptions under section 25(b) (1), a credit of \$100 against net income.

(2) If no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then the estate or trust shall be allowed the same credits against net income for interest as are allowed by section 25(a).

(b) **Credits of beneficiary.** If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts of interest specified in section 25(a) as are, under this Supplement, required to be included in computing his net income. Any remaining portion of such amounts specified in section 25(a) shall, for the purpose of the normal tax, be allowed as credits to the estate or trust.

(c) **Credits of estate or trust and beneficiary in case of bond premium.** If the estate or trust elects under section 125 to treat the premium on bonds, the interest on which is allowable as a credit under section 25(a) (1) or (2), as amortizable,

(1) For the purposes of subsection (a) (2), the credits allowed by section 25(a) shall be reduced as provided in section 125(a) (3);

(2) For the purposes of subsection (b), the proportionate share of the legatee, heir, or beneficiary of such interest shall be his proportionate share of such interest (determined without regard to this paragraph) reduced by so much of the deduction under section 23(v) as is attributable to such share. The remainder of such deduction, for the purposes of the last sentence of subsection (b), shall be applied in reduction of such credits of the estate or trust. 53 Stat. 67, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 126(d), 56 Stat. 824; May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 10(e), 58 Stat. 239; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (6), 59 Stat. 559; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(d), 62 Stat. 114.

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Historical Note

1948 Amendment. Subsec. (a) (1) amended by Act Apr. 2, 1948, which struck out \$500 and inserted in lieu thereof \$600 to accommodate the increased exemptions under section 25(b) of I.R.C. 1939.

1945 Amendment. Subsec. (a) (1) amended generally by Act Nov. 8, 1945.

1944 Amendment. Subsec. (a) (1) amended generally by Act May 29, 1944, which incorporated technical changes necessitated by the amendment of section 25 of I.R.C. 1939.

1942 Amendment. Subsec. (c) added by Act Oct. 21, 1942.

Effective Date of 1948 Amendment. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C. 1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C. 1939.

Effective Date of 1945 Amendment. Section 102(c) of Act Nov. 8, 1945, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1945.

§ 164. Different taxable years

If the taxable year of a legatee, heir, or beneficiary is different from that of the estate or trust, the amount which he is required, under section 162(b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year. 53 Stat. 67, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 111(d), 56 Stat. 810.

Historical Note

1942 Amendment. Act Oct. 21, 1942, amended section by inserting "legatee, heir, or beneficiary" in lieu of "beneficiary".

Effective Date of 1942 Amendment. Section 111(e) of Act Oct. 21, 1942, provided as follows: "(e) The amendments made by this section [to sections 23(b) (3), 162(b—d), and 164] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that in the case of income paid, credited or to be distributed or amounts paid, credited or to be distributed by an estate or trust the amendments made by this section shall be applicable only with respect to such income and such amounts paid, credited or to be distributed on or

For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Apr. 2, 1948, see 1948 U.S. Code Cong. Service, p. 541. See, also, Acts Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

after the beginning of the first taxable year of the estate or trust, as the case may be, beginning after December 31, 1941."

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 165. Employees' trusts

(a) **Exemption from tax.** A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his

employees or their beneficiaries shall not be taxable under this supplement and no other provision of this supplement shall apply with respect to such trust or to its beneficiary—

(1) if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

(A) 70 per centum or more of all the employees, or 80 per centum or more of all the employees who are eligible to benefit under the plan if 70 per centum or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding five years, employees whose customary employment is for not more than twenty hours in any one week, and employees whose customary employment is for not more than five months in any calendar year, or

(B) such employees as qualify under a classification set up by the employer and found by the Commissioner not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(5) A classification shall not be considered discriminatory within the meaning of paragraphs (3) (B) or (4) of this subsection merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 1426(a) (1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 1426(a) (1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law.

(6) A plan shall be considered as meeting the requirements of paragraph (3) of this subsection during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(b) **Taxability of beneficiary.** The amount actually distributed or made available to any distributee by any such trust shall be taxable to

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him, in the year in which so distributed or made available, under section 22(b) (2) as if it were an annuity the consideration for which is the amounts contributed by the employee, except that if the total distributions payable with respect to any employee are paid to the distributee within one taxable year of the distributee on account of the employee's separation from the service, the amount of such distribution to the extent exceeding the amount contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations which shall be prescribed by the Secretary. For purposes of this subsection, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 130A (d) (2) and (3)) of the employer corporation. In no event shall the amount actually distributed or made available to any distributee include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall also be determined in accordance with regulations which shall be prescribed by the Secretary.

(c) **Treatment of beneficiary of trust not exempt under subsection (a).** Contributions to a trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under section 165(a) shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made.

(d) **Certain employees' annuities.** Notwithstanding subsection (c) or any other provision of this chapter, a contribution to a trust by an employer shall not be included in the income of the employee in the year in which the contribution is made if—

(1) such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The amount so contributed by the employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 22(b) (2); except that if the tax imposed by this chapter for any taxable year beginning before January 1, 1949, has been paid by the employee with respect to such contribution for such year, and not credited or refunded, the amount so contributed for such year shall constitute consideration paid by the employee for such annuity contract. This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under subsection (a). For the purposes of this subsection, amounts

paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term 'annuity contracts purchased by the trustee' shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term 'employee' shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942. 53 Stat. 67, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 218, 53 Stat. 876; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 162(a), 56 Stat. 862; Oct. 25, 1949, c. 720, § 5(a), 63 Stat. 893; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 335(a), 65 Stat. 507; July 17, 1952, c. 942, § 1, 66 Stat. 766.

Historical Note

References in Text. Section 1426(a) (1) (relating to the Federal Insurance Contributions Act), referred to in subsec (a) (5), is section 1426(a) (1) of I.R.C. 1939.

1952 Amendment. Subsec. (b) amended by Act July 17, 1952, to extend the exception to any distribution of employer securities purchased with employee contributions thus placing employees purchasing such securities in qualified trust plans in same tax light as those acquiring securities directly.

1951 Amendment. Subsec. (b) amended by Act Oct. 20, 1951, adding last sentence.

1949 Amendment. Subsec. (d) added by Act Oct. 25, 1949.

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety, adding pars. (3-6) to subsec. (a), substituting new provisions in subsec. (b), and adding subsec. (c).

1939 Amendment. Subsec. (a) amended and subsec. (b) added by Act June 29, 1939.

Effective Date of 1952 Amendment. Section 2 of Act July 17, 1952 provided that the amendment of this section should be applicable with respect to taxable years beginning after Dec. 31, 1951.

Effective Date of 1951 Amendment. Amendment of subsec. (b) made applicable with respect to distributions made after Dec. 31, 1950, by section 335(b) of Act Oct. 20, 1951.

Effective Date of 1949 Amendment. Section 5(b) of Act Oct. 25, 1949, provided that: "The amendment made by sub-section (a) shall be applicable to taxable years beginning after December 31, 1938."

Effective Date of 1942 Amendment. Section 162(d) of Act Oct. 21, 1942, as amended by Acts Dec. 17, 1943, c. 346, § 3, 57 Stat. 602; Sept. 20, 1944, c. 616, § 2, 58 Stat. 830, provided as follows:

"(d) The amendments made by this section [to sections 22(b) (2) (B), 23(p), this section and section 80a-3(c) (13) of Title 15] shall be applicable as to both

the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165 (a) (3), (4), (5), and (6) until the beginning of the first taxable year beginning after December 31, 1942,

"(B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions thereof satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943.

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p) (1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p) (1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

"(2) A stock bonus, pension, profit-sharing, or annuity plan—

"(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect

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by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

"(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period."

Effective Date of 1939 Amendment. Section 229 of Act June 20, 1939 provided that the amendment of this section was

made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p m., E.W.T., c. 619, title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section. 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act July 17, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 2361. See, also, Act Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781

§ 166. Revocable trusts

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor. 53 Stat. 68.

§ 167. Income for benefit of grantor

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23(o), relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

(c) Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income, in the discretion of another person, the trustee, or the grantor acting as trustee or cotrustee, may be applied or distributed for the support or maintenance of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are

paid out of corpus or out of other than income for the taxable year, such amounts shall be considered paid out of income to the extent of the income of the trust for such taxable year which is not paid, credited, or to be distributed under section 162 and which is not otherwise taxable to the grantor. 53 Stat. 68, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 134(a), 58 Stat. 51.

Historical Note

1944 Amendment. Subsec. (c) added by Act Feb. 25, 1944.

Effective Date of 1944 Amendment. Section 134(b) of Act Feb. 25, 1944, provided as follows:

"(1) General Rule.—Except as provided in paragraph (2), the amendments made by subsection (a) shall be applicable with respect to taxable years beginning after December 31, 1942, unless a taxable year of the trust beginning in 1942 ends within a taxable year of the grantor beginning in 1943, in which case, except as provided in paragraph (2), such amendments shall not be applicable to such taxable year of the grantor.

"(2) Retroactive effect.—The amendments made by subsection (a) shall also be applicable with respect to all taxable years to which such amendments are not made applicable under paragraph (1), in the same manner as if such amendments had been a part of the revenue laws applicable to such taxable years, but only if there are filed with the Commissioner (in accordance with regulations prescribed by him with the approval of the Secretary) at such time and by such persons as may be prescribed under such regulations, signed consents that there shall be paid, at such time as the Commissioner may prescribe, all of the taxes under Chapter 1 of the Internal Revenue Code [1939] or under the corresponding provisions of prior revenue laws which would have been paid for the taxable years concerned if such amendments had been a part of the revenue laws applicable to such taxable years.

"(3) Deficiencies and overpayments.—The period of limitations provided in sections 275 and 276 of the Internal Revenue Code [1939] or corresponding provisions of a prior revenue law on making of assessments and the beginning of dis-

traint or a proceeding in court for collection shall with respect to any deficiency resulting from any such consents include one year immediately after the date such consents were filed, and such assessment and collection may be made notwithstanding any provision of the internal revenue laws or any rule of law which would otherwise prevent such assessment and collection. The period within which claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, with respect to any overpayment by the grantor resulting from the consents shall include one year immediately after the date of the filing of the consents, and credit or refund may be allowed or made notwithstanding any provision or rule of law (other than this subsection, section 3760 of the Internal Revenue Code [1939] or a corresponding provision of prior law, relating to closing agreements, and section 3761 of the Internal Revenue Code [1939] or a corresponding provision of prior law, relating to compromises) which would otherwise prevent such credit or refund. No interest shall be allowed or paid on any overpayment, or assessed on any deficiency, resulting from the application of paragraph (2) of this subsection."

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 168. Taxes of foreign countries and possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as credit against the tax of the beneficiary of an estate or trust to the extent provided in section 131. 53 Stat. 68.

§ 169. Common trust funds

(a) **Definitions.** The term "common trust fund" means a fund maintained by a bank (as defined in section 104)—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

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(b) **Taxation of common trust funds.** A common trust fund shall not be subject to taxation under this chapter, subchapters A or B of chapter 2, or section 105 or 106 of the Revenue Act of 1935, 49 Stat. 1017, 1019, or chapter 6 and for the purposes of such chapters and subchapters shall not be considered a corporation.

(c) **Income of participants in fund**

(1) **Inclusions in net income.** Each participant in the common trust fund in computing its net income shall include, whether or not distributed and whether or not distributable—

(A) As part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months.

(B) As part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months.

(C) Its proportionate share of the ordinary net income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) **Credit for partially exempt interest.** The proportionate share of each participant in the amount of interest specified in section 25(a) received by the common trust fund shall for the purposes of this Supplement be considered as having been received by such participant as such interest. If the common trust fund elects under section 125 to treat the premium on bonds, the interest on which is allowable as a credit under section 25(a) (1) or (2), as amortizable, for the purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 23(v) as is attributable to such share.

(d) **Computation of common trust fund income.** The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) There shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) After excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) The so-called "charitable contribution" deduction allowed by section 23(o) shall not be allowed.

(4) The standard deduction provided in section 23(aa) shall not be allowed.

(e) **Admission and withdrawal.** No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) **Returns by bank.** Every bank (as defined in section 104) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the

proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under section 52.

(g) Different taxable years of common trust fund and participant. If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any taxable year of the common trust fund (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the participant. 53 Stat. 68, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 126(e), 150(f), 56 Stat. 824, 825; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 9(b) (2), 58 Stat. 238.

Historical Note

1944 Amendment. Subsec. (d) amended by Act May 29, 1944, which added subd. 4.

1942 Amendment. Subsecs (c) (1) (A, B), 2 and (d) (1, 2) amended by Act Oct. 21, 1942.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong.Service, p. 1058.

§ 170. Net operating losses

The benefit of the deduction for net operating losses allowed by section 23(s) shall be allowed to estates and trusts under regulations prescribed by the Commissioner with the approval of the Secretary. The benefit of such deduction shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Commissioner with the approval of the Secretary. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(c), 53 Stat. 868.

§ 171. Income of an estate or trust in case of divorce, etc.

(a) **Inclusion in gross income.** There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance the amount of the income of any trust which such wife is entitled to receive and which, except for the provisions of this section, would be includible in the gross income of her husband, and such amount shall not, despite section 166, section 167, or any other provision of this chapter, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) **Wife considered a beneficiary.** For the purposes of computing the net income of the estate or trust and the net income of the wife described in section 22(k) or subsection (a) of this section, such wife shall be considered as the beneficiary specified in this supplement. A periodic

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payment under section 22(k) to any part of which the provisions of this supplement are applicable shall be included in the gross income of the beneficiary in the taxable year in which under this supplement such part is required to be included. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 120(c), 56 Stat. 817.

Historical Note

Effective Date. Section 120(g) of Act Oct. 21, 1942, provided as follows: "The amendments made by this section [to sections 22(b) (2), (k), 23(n), 25(b) (2) (A), 171 and 3797(a) (17)] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that if the first taxable year beginning after December 31, 1941, of the husband does not begin on the same day as the first taxable year beginning after December 31, 1941, of the wife, such amendments shall first become applicable

in the case of the husband on the first day of the wife's first taxable year beginning after December 31, 1941, regardless of the taxable year of the husband in which such day falls."

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 172. Allowance of amortization deduction

The benefit of the deduction for amortization allowed by section 23 (t) shall be allowed to estates and trusts in the same manner and to the same extent as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Commissioner with the approval of the Secretary. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 155 (g), 56 Stat. 851, amended Aug. 15, 1953, c. 512, Title II, § 206(b) (2), 67 Stat. 622.

Historical Note

1953 Amendment. Act Aug. 15, 1953 amended section by striking out the words "of emergency facilities."

Effective Date of 1953 Amendment. Section 206(c) of Act Aug. 15, 1953 provided in part that the amendment to this section should apply only with respect to taxable years ending after Aug. 15, 1953.

Effective Date. Section 155(1) of Act Oct. 21, 1942 made section effective as of Oct. 8, 1940.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423.

SUPPLEMENT F.—PARTNERSHIPS

§ 181. Partnership not taxable

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. 53 Stat. 69.

§ 182. Tax of partners

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

(a) As part of his gains and losses from sales or exchanges of capital assets held for not more than 6 months, his distributive share of the gains and losses of the partnership from sales or exchanges of capital assets held for not more than 6 months.

(b) As part of his gains and losses from sales or exchanges of capital assets held for more than 6 months, his distributive share of the gains

and losses of the partnership from sales or exchanges of capital assets held for more than 6 months.

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183(b). 53 Stat. 69, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 150(g) (1), 56 Stat. 845.

Historical Note

1942 Amendment. Subsecs. (a) and (b) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sec-

tions 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 183. Computation of partnership income

(a) **General rule.** The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subsections (b), (c), and (d).

(b) **Segregation of items.**

(1) **Capital gains and losses.** There shall be segregated the gains and losses from sales or exchanges of capital assets.

(2) **Ordinary net income or loss.** After excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income.

(c) **Charitable contributions.** In computing the net income of the partnership the so-called "charitable contribution" deduction allowed by section 23(o) shall not be allowed; but each partner shall be considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of the character which would be allowed to the partnership as a deduction under such section if this subsection had not been enacted.

(d) **Standard deduction.** In computing the net income of the partnership, the standard deduction provided in section 23(aa) shall not be allowed. 53 Stat. 70, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 150(g) (2) (A), 56 Stat. 845; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 9(c), 58 Stat. 238.

Historical Note

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which struck out "(b) and (c)" and inserting in lieu thereof "(b), (c), and (d)".

Subsec. (d) added by Act May 29, 1944.

1942 Amendment. Subsec. (b) (1, 2) amended by Act Oct. 21, 1942.

Effective Date of 1944 Amendment. Section 2 of Act May 29, 1944, made amendment of section applicable to taxable years beginning after Dec. 31, 1943.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

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Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong Service, p. 1056.

§ 184. Credits against net income

The partner shall, for the purpose of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts (not in excess of the net income of the partnership) of interest specified in section 25(a) as are received by the partnership. If the partnership elects under section 125 to treat the premium on bonds, the interest on which is allowable as a credit under section 25(a) (1) or (2), as amortizable, for the purposes of the preceding sentence the partner's proportionate share of the interest received by the partnership shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 23(v) as is attributable to such share. 53 Stat. 70, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 126(f), 56 Stat. 825.

Historical Note

1942 Amendment. Act Oct. 21, 1942 amended section by adding the second sentence.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 185. Repealed. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 107(a), 58 Stat. 31.

Historical Note

Section, as incorporated into the Internal Revenue Code [1939] and derived from Act May 28, 1938, c. 289, § 185, 52 Stat. 522, provided as follows:

"§ 185. Earned income

"In the case of the members of a partnership the proper part of each share of the net income which consists of earned income shall be determined under

rules and regulations to be prescribed by the Commissioner with the approval of the Secretary and shall be separately shown in the return of the partnership. 53 Stat. 70."

Effective Date. The repeal of this section was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 of Act Feb. 25, 1944.

§ 186. Taxes of foreign countries and possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of the member of a partnership to the extent provided in section 131. 53 Stat. 70.

§ 187. Partnership returns

Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. 53 Stat. 70.

§ 188. Different taxable years of partner and partnership

If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner. 53 Stat. 71.

§ 189. Net operating losses

The benefit of the deduction for net operating losses allowed by section 23(s) shall not be allowed to a partnership but shall be allowed to the members of the partnership under regulations prescribed by the Commissioner with the approval of the Secretary. Added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(d), 53 Stat. 868.

§ 190. Allowance of amortization deduction

In the case of emergency facilities or grain storage facilities of a partnership, the benefit of the deduction for amortization allowed by section 23(t) shall not be allowed to the members of a partnership but shall be allowed to the partnership in the same manner and to the same extent as in the case of an individual. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 155(h), 56 Stat. 851, amended Aug. 15, 1953, c. 512, Title II, § 206(b) (3), 67 Stat. 622.

Historical Note

1953 Amendment. Act Aug. 15, 1953 amended section by inserting the words "or grain storage facilities" after the words "emergency facilities."

Effective Date of 1953 Amendment. Section 206(c) of Act Aug. 15, 1953 provided in part that the amendment to this section should apply only with respect to taxable years ending after Aug. 15, 1953.

Effective Date. Section 155(i) of Act Oct. 21, 1942, made section effective as of Oct. 8, 1940.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423.

§ 191. Family partnerships

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service. For the purpose of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The "family" of any individual shall include only his spouse, ancestors, and lineal descendants, and any trust for the primary benefit of such persons. Added Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 340 (b), 65 Stat. 511.

§ 191 INCOME TAX—SUPPLEMENT PROVISIONS

Historical Note

Effective Date. Section 340(c) of Act Oct. 20, 1951, provided that:

"The amendments made by this section [amendment of section 3797(a) of I.R.C. 1939 and addition of this section] shall be applicable with respect to taxable years beginning after December 31, 1950. The determination as to whether a person shall be recognized as a partner for income tax purposes for any taxable year beginning before January 1, 1951, shall be made as if this section had not been enacted and without inferences drawn from the fact that this section is not expressly made applicable with respect to taxable years beginning before January 1, 1951. In applying this subsection where the taxable year of any family partner is different from the taxable year of the partnership—

"(1) if a taxable year of the partnership beginning in 1950 ends within or with, as to all of the family partners, taxable years which begin in 1951, then the amendments made by this section

shall be applicable with respect to all distributive shares of income derived by the family partners from such taxable year of the partnership beginning in 1950, and

"(2) if a taxable year of the partnership ending in 1951 ends within or with a taxable year of any family partner which began in 1950, then the amendments made by this section shall not be applicable with respect to any of the distributive shares of income derived by the family partners from such taxable year of the partnership."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

SUPPLEMENT G.—INSURANCE COMPANIES

§ 201. Life insurance companies

(a) Imposition of tax

(1) **In general.** There shall be levied, collected, and paid for each taxable year upon the adjusted normal-tax net income (as defined in section 202) and upon the adjusted corporation surtax net income (as defined in section 203) of every life insurance company taxes computed as provided in section 13(b) and in section 15(b). In lieu of the taxes imposed by the preceding sentence, there shall be levied, collected, and paid for taxable years beginning in 1953 upon the 1953 adjusted normal-tax net income (as defined in section 203A) of every life insurance company a tax equal to the sum of the following:

3 $\frac{3}{4}$ per centum of the amount thereof not in excess of \$200,000,
plus

6 $\frac{1}{2}$ per centum of the amount thereof in excess of \$200,000.

(2) **Foreign life insurance companies.** A foreign life insurance company carrying on a life insurance business within the United States if with respect to its United States business it would qualify as a life insurance company under subsection (b) shall be taxable in the same manner as a domestic life insurance company except that the determinations necessary for the purposes of this chapter shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Insurance Commissioners.

(3) **No United States insurance business.** Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

(b) **Definition of life insurance company.** When used in this chapter, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or

noncancellable contracts of health and accident insurance, and the life insurance reserves (as defined in subsection (c) (2)) plus unearned premiums and unpaid losses on noncancellable life, health, or accident policies not included in life insurance reserves, of which comprise more than 50 per centum of its total reserves. For the purpose of this subsection, total reserves means life insurance reserves, unearned premiums and unpaid losses not included in life insurance reserves, and all other insurance reserves required by law. For taxable years beginning after December 31, 1943, a burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this section but shall be taxable under section 204 or section 207.

(c) Other definitions. In the case of a life insurance company—

(1) **Gross income.** The term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

(2) **Life insurance reserves.** The term "life insurance reserves" means amounts which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies. Such life insurance reserves, except in the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation and except as hereinafter provided in the case of assessment life insurance, must also be required by law. In the case of an assessment life insurance company or association the term "life insurance reserves" includes sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation or association, or bylaws approved by State Insurance Commissioner of such company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use.

(3) **Adjusted reserves.** The term "adjusted reserves" means life insurance reserves plus 7 per centum of that portion of such reserves as are computed on a preliminary term basis.

(4) **Reserve earnings rate.** The term "reserve earnings rate" means a rate computed by adding 2.1125 per centum (65 per centum of $3\frac{1}{4}$ per centum) to 35 per centum of the average rate of interest assumed in computing life insurance reserves. Such average rate shall be calculated by multiplying each assumed rate of interest by the means of the amounts of the adjusted reserves computed at that rate at the beginning and end of the taxable year and dividing the sum of the products by the mean of the total adjusted reserves at the beginning and end of the taxable year.

(5) **Reserve for deferred dividends.** The term "reserve for deferred dividends" means sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than five years from the date of the policy contract.

§ 201 INCOME TAX—SUPPLEMENT PROVISIONS

(6) Interest paid. The term "interest paid" means—

(A) All interest paid within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this chapter, and

(B) All amounts in the nature of interest, whether or not guaranteed, paid within the taxable year on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which do not involve, at the time of payment, life, health, or accident contingencies.

(7) Net income. The term "net income" means the gross income less—

(A) Tax-free interest. The amount of interest received during the taxable year which under section 22(b) (4) is excluded from gross income;

(B) Investment expenses. Investment expenses paid during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this subparagraph shall not exceed one-fourth of 1 per centum of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which net income computed without any deduction for investment expenses allowed by this subparagraph, or for tax-free interest allowed by subparagraph (A), exceeds 3¼ per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

(C) Real estate expenses. Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

(D) Depreciation. A reasonable allowance, as provided in section 23(l), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence.

(d) Rental value of real estate. The deduction under subsection (c) (7) (C) or (c) (7) (D) of this section on account of any real estate owned and occupied in whole or in part by a life insurance company, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

(e) Amortization of premium and accrual of discount. The gross income, the deduction provided in section 201(c) (7) (A) and the credit allowed against net income in section 26(a) shall each be decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined (1)

in accordance with the method regularly employed by such company, if such method is reasonable, and (2) in all other cases, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(f) **Double deductions.** Nothing in this section or in section 202, 203, or 203A shall be construed to permit the same items to be twice deducted.

(g) **Credits under section 26.** For the purposes of this section, in computing normal tax net income and corporation surtax net income, the credits provided in section 26 shall be allowed in the manner and to the extent provided in sections 13(a) and 15(a). 53 Stat. 71, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 203, 53 Stat. 865; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 163(a), 56 Stat. 867; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(g) (3), 64 Stat. 918; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 512, Title III, § 336(a), (c) (2), 65 Stat. 507; July 8, 1952, c. 592, § 1(a), 66 Stat. 444; Aug. 15, 1953, c. 512, Title I, § 105(a), 67 Stat. 616.

Historical Note

1953 Amendment. Subsec. (a) (1) amended by Act Aug. 15, 1953 to apply the 1951 and 1952 method of taxation to 1953.

1952 Amendment. Subsec. (a) (1) amended by Act July 8, 1952, to apply the 1951 method of taxation to 1952.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 336(a), to add last sentence.

Subsec. (f) amended by Act Oct. 20, 1951, § 336(c) (2), to substitute "203, or 203A" in lieu of "or 203".

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 3, 1950, text, which substituted "computed as provided in section 13(b) and in section 15(b)" in lieu of "at the rates provided in section 13 or section 14(b) and in section 15(b)".

1942 Amendment. Act Oct. 21, 1942 amended this section in its entirety, affecting provisions of former subsecs. (a) and (b) and adding new subsecs. (c-g).

1939 Amendment. Subsec. (b) amended by Act June 29, 1939.

Effective Date of 1953 Amendment. Section 105(b) of Act Aug. 15, 1953 provided in part that the amendment to subsec. (a) (1) should apply only to taxable years beginning in 1953.

Effective Date of 1952 Amendment. Section 2 of Act July 8, 1952, provided in part that the amendment of subsec. (a) (1) should be applicable to taxable years beginning in 1952.

Effective Date of 1951 Amendment. Amendment of subsecs. (a) (1) and (f) made applicable to taxable years beginning in 1951, by section 336(d) of Act Oct. 20, 1951. The application of the amendment to subsec. (f) by said Act Oct. 20, 1951 was extended to taxable years beginning after Dec. 31, 1952 by section 105(b) of Act Aug. 15, 1953.

Effective Date of 1950 Amendments. Section 121(g) (3) of Act Sept. 23, 1950,

provided in part that the amendment of subsec. (a) (1) by said Act Sept. 23, 1950 should be effective with respect to taxable years beginning after June 30, 1950, and with respect to taxable years beginning on Jan. 1, 1950, and ending on Dec. 31, 1950.

Effective Date of 1941 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1939 Amendment. Amendment of subsec. (b) made applicable only with respect to taxable years beginning after Dec. 31, 1939 by section 229 of Act June 29, 1939.

Filing of Returns for Taxable Year 1949. Section 402 of Act Sept. 23, 1950, c. 994, Title IV, 64 Stat. 961, provided for the filing of returns for taxable year 1949 by every life insurance company subject to the taxes imposed by this section.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2423. See, also, Acts July 8, 1952, 1952 U.S.Code Cong. and Adm.News, p. 2001; Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 202 INCOME TAX—SUPPLEMENT PROVISIONS

§ 202. Adjusted normal-tax net income

(a) **Definition.** For the purposes of section 201, the term "adjusted normal-tax net income" means the normal-tax net income minus the reserve and other policy liability credit provided in subsection (b) and plus the amount of the adjustment for certain reserves provided in subsection (c).

(b) Reserve and other policy liability credit.

As used in this section the term "reserve and other policy liability credit" means an amount computed by multiplying the normal-tax net income by a figure, to be determined and proclaimed by the Secretary for each taxable year. This figure shall be based on such data with respect to life insurance companies for the preceding taxable year as the Secretary considers representative and shall be computed as follows:

(1) **In general.** Except as provided in paragraph (2), the figure shall be computed in accordance with the following formula: The ratio which a numerator comprised of the aggregate of the sums of (A) 2 per centum of the reserves for deferred dividends, (B) interest paid, and (C) the product of (i) the mean of the adjusted reserves at the beginning and end of the taxable year and (ii) the reserve earnings rate bears to a denominator comprised of the aggregate of the excess of net incomes computed without any deduction for tax-free interest, over the adjustment for certain reserves provided in subsection (c).

(2) **Special rule for 1949 and 1950.** In the case of the taxes imposed for a taxable year beginning in 1949 or 1950, the figure to be used for such year shall be computed as provided in paragraph (1) except that—

(A) in computing the product required under clause (C) of paragraph (1), there shall be used, in lieu of the reserve earnings rate, the average rate of interest assumed in computing life insurance reserves. Such average rate shall be calculated in the manner provided in the second sentence of section 201(c) (4); and

(B) if the Secretary, in computing the ratio, finds that the net effect of including the data with respect to any life insurance company is to increase the numerator more than it increases the denominator, he shall limit the net change in the numerator resulting from such inclusion to the net change in the denominator resulting therefrom.

(c) **Adjustment for certain reserves.** In the case of a life insurance company writing contracts other than life insurance or annuity contracts (either separately or combined with noncancellable health and accident insurance), the term "adjustment for certain reserves" means an amount equal to $3\frac{1}{4}$ per centum of the unearned premiums and unpaid losses on such other contracts which are not included in life insurance reserves. For the purposes of this subsection such unearned premiums shall not be considered to be less than 25 per centum of the net premiums written during the taxable year on such other contracts. 53 Stat. 71, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 163(a), 56 Stat. 867; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title IV, § 401(a), 64 Stat. 961.

Historical Note

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950 to revise the statutory formula used in computation of income tax of life insurance companies.

1942 Amendment. Act Oct. 21, 1942 amended section in its entirety.

Effective Date of 1950 Amendment. Section 401(c) of Act Sept. 23, 1950, provided that: "The amendments made by this section [amending subsec. (b) of this

section] shall be applicable to taxable years beginning after December 31, 1948. The Secretary of the Treasury shall, within sixty days after the date of the enactment of this Act [Sept. 23, 1950], determine and proclaim in accordance with the provisions of section 202(b) of the Internal Revenue Code, as amended by this section [subsec. (b) of this section] the figures to be used by life insurance companies in computing their reserve and

other policy liability credits for taxable years beginning in 1949."

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942 made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053.

§ 203. Adjusted corporation surtax net income

(a) **Definition.** For the purposes of section 201, the term "adjusted corporation surtax net income" means the corporation surtax net income minus the reserve and other policy liability credit and plus the adjustment for certain reserves provided in section 202(c).

(b) **Reserve and other policy liability credit.** As used in this section, the term "reserve and other policy liability credit" means an amount computed by multiplying the corporation surtax net income by the applicable figure determined and proclaimed under section 202(b). 53 Stat. 71, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(e) (1), 53 Stat. 868; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 163(a), 56 Stat. 867; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title IV, § 401 (b), 64 Stat. 961.

Historical Note

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, which inserted "applicable" preceding "figure".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1939 Amendment. Subsec. (a) (8) added by Act June 29, 1939.

Effective Date of 1950 Amendment. Amendment of subsec. (b) by Act Sept. 23, 1950, as applicable to taxable years beginning after Dec. 31, 1948, see note set out under section 202 of I.R.C.1939.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053.

§ 203A. 1953 adjusted normal-tax net income

(a) **1953 adjusted normal-tax net income.** For the purposes of section 201, the term "1953 adjusted normal-tax net income" means the normal-tax net income plus eight times the amount of the adjustment for certain reserves provided in section 202(c) and minus the reserve interest credit, if any, provided in subsection (b) of this section.

(b) **Reserve interest credit.** For the purposes of subsection (a), the reserve interest credit shall be an amount determined as follows:

(1) Divide the amount of the adjusted net income (as defined in subsection (c)) by the amount of the required interest (as defined in subsection (d)).

(2) If the quotient obtained in paragraph (1) is 1.05 or more, the reserve interest credit shall be zero.

(3) If the quotient obtained in paragraph (1) is 1.00 or less, the reserve interest credit shall be an amount equal to 50 per centum of the normal-tax net income.

§ 203A INCOME TAX—SUPPLEMENT PROVISIONS

(4) If the quotient obtained in paragraph (1) is more than 1.00 but less than 1.05, the reserve interest credit shall be the amount obtained by multiplying the normal-tax net income by 10 times the difference between the figures 1.05 and such quotient.

(c) **Adjusted net income.** For the purposes of subsection (b) (1), the term "adjusted net income" means the net income computed without any deduction for tax-free interest minus 50 per centum of the amount of the adjustment for certain reserves provided in section 202 (c).

(d) **Required interest.** For the purposes of subsection (b) (1), the term "required interest" means the total of—

(1) The sum of the amounts obtained by multiplying (A) each rate of interest assumed in computing the taxpayer's life insurance reserves by (B) the means of the amounts of the taxpayer's adjusted reserves computed at that rate at the beginning and end of the taxable year,

(2) 2 per centum of the reserve for deferred dividends, and

(3) Interest paid. Added Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 336 (b), 65 Stat. 508, amended July 8, 1952, c. 592, § 1 (b), 66 Stat. 444; Aug. 15, 1953, c. 512, Title I, § 105 (a), 67 Stat. 616.

Historical Note

1953 Amendment. Act Aug. 15, 1953 amended section by applying the 1951 and 1952 method of taxation to 1953.

1952 Amendment. Act July 8, 1952, amended section to apply the 1951 method of taxation to 1952.

Effective Date of 1953 Amendment. Section 105(b) of Act Aug. 15, 1953, provided in part that the amendment to this section should apply only to taxable years beginning in 1953.

Effective Date of 1952 Amendment. Section 2 of Act July 8, 1952, provided in part that the amendment of section should be applicable to taxable years beginning in 1952.

Effective Date. Section made applicable to taxable years beginning in 1951 by section 336(d) of Act Oct. 20, 1951.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 204. Insurance companies other than life or mutual

(a) Imposition of tax.

(1) **In general.** There shall be levied, collected, and paid for each taxable year upon the normal-tax net income and upon the corporation surtax net income of every insurance company (other than a life or mutual insurance company) and every mutual marine insurance company and every mutual fire insurance company exclusively issuing either perpetual policies, or policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable upon cancellation or expiration of the policy taxes computed as provided in section 13(b) and in section 15(b).

(2) **Normal-tax and corporation surtax net income of foreign insurance companies other than life or mutual and foreign mutual marine.** In the case of a foreign insurance company (other than a life or mutual insurance company) and a foreign mutual marine insurance company and a foreign mutual fire insurance company described in paragraph (1) of this subsection, the normal tax net income shall be the net income from sources within the United States minus the credit provided in section 26(a) and the credit provided in section 26(b), and the corporation surtax net income shall be the net income from sources within the United States minus the credit provided in section 26(b).

(3) **No United States insurance business.** Foreign insurance companies (other than a life or mutual insurance company) and foreign mutual marine insurance companies and foreign mutual fire insurance companies described in paragraph (1) of this subsection not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

(b) **Definition of income, etc.** In the case of an insurance company subject to the tax imposed by this section—

(1) **Gross income.** "Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22; except that in the case of a mutual fire insurance company described in paragraph (1) of subsection (a) of this section, the amount of single deposit premiums paid to such company shall not be included in gross income;

(2) **Net income.** "Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

(3) **Investment income.** "Investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows:

To all interest, dividends and rents received during the taxable year, add interest, dividends and rents due and accrued at the end of the taxable year, and deduct all interest, dividends and rents due and accrued at the end of the preceding taxable year;

(4) **Underwriting income.** "Underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred;

(5) **Premiums earned.** "Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year. For the purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 201(c) (2), pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by this section and not qualifying as a life insurance company under section 201(b);

(6) **Losses incurred.** "Losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year;

(7) **Expenses incurred.** "Expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of

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the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by subsection (c) of this section.

(c) **Deductions allowed.** In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in section 23(a);

(2) All interest as provided in section 23(b);

(3) Taxes as provided in section 23(c);

(4) Losses incurred as defined in subsection (b) (6) of this section;

(5) **Capital losses.** Capital losses to the extent provided in section 117 plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of interest, dividends, rents, and net premiums received. In the application of section 117(e) for the purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the corporation surtax net income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(6) Debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) The amount of interest earned during the taxable year which under section 22(b) (4) is excluded from gross income;

(8) A reasonable allowance for the exhaustion, wear and tear of property, as provided in section 23(l);

(9) Charitable, and so forth, contributions, as provided in section 23(q);

(10) Deductions (other than those specified in this subsection) as provided in section 23;

(11) Dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in paragraph (1) of subsection (a) of this section. The term "paid or declared" shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company.

(d) **Deductions of foreign corporations.** In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States.

(e) **Double deductions.** Nothing in this section shall be construed to permit the same item to be twice deducted.

(f) Credits under section 26. For the purposes of this section, in computing normal tax net income and corporation surtax net income, the credits provided in section 26 shall be allowed in the manner and to the extent provided in sections 13(a) and 15(a). 53 Stat. 72, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 204, 226, 53 Stat. 865, 881; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 124(b), 160(d), 164(a-d), 56 Stat. 821, 861, 870-872; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 135(a-c), 58 Stat. 52; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(g) (7), 59 Stat. 570; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(g) (4), 64 Stat. 918.

Historical Note

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, which substituted "computed as provided in section 13(b) and section 15(b)" in lieu of "at the rates specified in section 13 or section 14(b) and in section 15(b)".

1945 Amendment. Subsec. (a) (2) amended generally by Act Nov. 8, 1945.

1944 Amendment. Subsec. (a) (1), (2), (3), respectively amended by Act Feb. 25, 1944. Par. (1) amended by inserting "and every mutual fire insurance company * * * of the policy" following "every mutual marine insurance company". Par. (2) amended by adding "and a foreign mutual fire insurance company described in paragraph (1) of this subsection" following "a foreign mutual marine insurance company". Par. (3) amended by adding "and foreign mutual fire insurance companies described in paragraph (1) of this subsection" following "foreign mutual marine insurance companies".

Subsecs. (b) (1) and (c) (11) amended by Act Feb. 25, 1944. Subsec. (b) (1) amended by inserting after the semicolon the following "except that in * * * included in gross income;". Subsec. (c) (11) amended by striking period at end thereof and inserting ", except in the case of a mutual fire insurance company described in paragraph (1) of subsection (a) of this section."

1942 Amendment. Subsecs. (a), (b) (5), (c) (5, 6), and (d) amended and subsecs. (c) (11), and (f) added by Act Oct. 21, 1942.

1939 Amendment. Subsecs. (a), (c) (10) amended by Act June 29, 1939.

Effective Date of 1950 Amendments. Section 121(g) (4) of Act Sept. 23, 1950, provided in part that the amendment of subsec. (a) (1) of this section by said Act Sept. 23, 1950 should be effective with respect to taxable years beginning after June 30, 1950, and with respect to taxable years beginning on Jan. 1, 1950, and ending on Dec. 31, 1950.

Effective Date of 1945 Amendment. Amendment of subsec. (a) (2) made applicable to taxable years beginning after

Dec. 31, 1945, by section 122(g) of Act Nov. 8, 1945.

Effective Date of 1944 Amendment. Amendments of subsecs. (a) (1, 2, 3), (b) (1), and (c) (11) by Act Feb. 25, 1944, § 135(a, b, c), made applicable to taxable years beginning after Dec. 31, 1941 by section 135(f) thereof.

Effective Date of 1942 Amendment. Amendments of subsecs. (a), (b) (5), (c) (5, 11) (d), and (f) by Act Oct. 21, 1942, §§ 164(a-c), 160(d), 164(d), made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendment of subsec. (c) (6) by Act Oct. 21, 1942, was made effective with respect to taxable years beginning after Dec. 31, 1938, by section 124(d) thereof.

Effective Date of 1939 Amendment. Amendment of subsec. (a) made applicable only with respect to taxable years beginning after Dec. 31, 1939 by section 229 of Act June 29, 1939.

Amendment of subsec. (c) (10) made applicable only with respect to taxable years beginning after Dec. 31, 1938 by section 226(b) of Act June 29, 1939.

Fiscal Year Taxpayers. For taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1944—Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53.
1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, see 1945 U.S. Code Cong. Service, p. 814.

§ 205 INCOME TAX—SUPPLEMENT PROVISIONS

§ 205. Taxes of foreign countries and possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 201, 204, or 207, to the extent provided in the case of a domestic corporation in section 131, and in the case of the tax imposed by section 201 or 204 "net income" as used in section 131 means the net income as defined in this Supplement. 53 Stat. 74.

§ 206. Computation of gross income

The gross income of insurance companies subject to the tax imposed by section 201 or 204 shall not be determined in the manner provided in section 119. 53 Stat. 74.

§ 207. Mutual insurance companies other than life or marine

(a) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year upon the income of every mutual insurance company (other than a life or a marine insurance company or a fire insurance company subject to the tax imposed by section 204 and other than an inter-insurer or reciprocal underwriter) a tax computed under paragraph (1) or paragraph (2) whichever is the greater and upon the income of every mutual insurance company (other than a life or a marine insurance company or a fire insurance company subject to the tax imposed by section 204) which is an interinsurer or reciprocal underwriter, a tax computed under paragraph (3):

(1) If the corporation surtax net income is over \$3,000 a tax computed as follows:

(A) **Taxable years beginning after December 31, 1950, and before April 1, 1951.** In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951—

(i) **Normal tax.** A normal tax of 28½ per centum of the normal-tax net income, or 57½ per centum of the amount by which the normal-tax net income exceeds \$3,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000.

(B) **Taxable years beginning after March 31, 1951, and before April 1, 1954.** In the case of taxable years beginning after March 31, 1951, and before April 1, 1954—

(i) **Normal tax.** A normal tax of 30 per centum of the normal-tax net income, or 60 per centum of the amount by which the normal-tax net income exceeds \$3,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000.

(C) **Taxable years beginning after March 31, 1954.** In the case of a taxable year beginning after March 31, 1954—

(i) **Normal tax.** A normal tax of 25 per centum of the normal-tax net income, or 50 per centum of the amount by which the normal-tax net income exceeds \$3,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000.

(2) If for the taxable year the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policy holders, minus the interest which under section 22(b) (4) is excluded from gross income, exceeds \$75,000, a tax equal to the excess of—

(A) 1 per centum of the amounts so computed, or 2 per centum of the excess of the amount so computed over \$75,000, whichever is the lesser, over

(B) the amount of the tax imposed under Subchapter E of Chapter 2.

(3) In the case of an interinsurer or reciprocal underwriter, if the corporation surtax net income is over \$50,000 a tax computed as follows:

(A) **Taxable years beginning after December 31, 1950, and before April 1, 1951.** In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951—

(i) **Normal tax.** A normal tax of 28 $\frac{3}{4}$ per centum of the normal-tax net income, or 57 $\frac{1}{2}$ per centum of the amount by which the normal-tax net income exceeds \$50,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds \$50,000, whichever is the lesser.

(B) **Taxable years beginning after March 31, 1951, and before April 1, 1954.** In the case of taxable years beginning after March 31, 1951, and before April 1, 1954—

(i) **Normal tax.** A normal tax of 30 per centum of the normal-tax net income, or 60 per centum of the amount by which the normal-tax net income exceeds \$50,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds \$50,000, whichever is the lesser.

(C) **Taxable years beginning after March 31, 1954.** In the case of a taxable year beginning after March 31, 1954—

(i) **Normal tax.** A normal tax of 25 per centum of the normal-tax net income, or 50 per centum of the amount by which the normal-tax net income exceeds \$50,000, whichever is the lesser; plus

(ii) **Surtax.** A surtax of 22 per centum of the corporation surtax net income in excess of \$25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds \$50,000, whichever is the lesser.

(4) **Gross amount received over \$75,000 but less than \$125,000.** If the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) is over \$75,000 but less than \$125,000, the amount ascertained under paragraph (1), paragraph (2) (A), and paragraph (3) shall be an amount which bears the same proportion to the amount ascertained under such paragraph, computed without reference to this paragraph, as the excess over \$75,000 of such gross amount received bears to \$50,000.

(5) **Foreign mutual insurance companies other than life or marine.** In the case of a foreign mutual insurance company (other than a life or marine insurance company or a fire insurance company subject to the tax imposed by section 204), the net income shall be the net income from sources within the United States and the gross amount of income from interest, dividends, rents, and net premiums shall be the amount of such income from sources within the United States.

(6) **No United States insurance business.** Foreign mutual insurance companies (other than a life or marine insurance company or a fire insurance company subject to the tax imposed by section 204) not carrying on

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an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

(b) **Definition of income, etc.** In the case of an insurance company subject to the tax imposed by this section—

(1) **Gross investment income.** "Gross investment income" means the gross amount of income during the taxable year from interest, dividends, rents, and gains from sales or exchanges of capital assets to the extent provided in section 117;

(2) **Net premiums.** "Net premiums" means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends upon the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (3);

(3) **Dividends to policyholders.** "Dividends to policyholders" means dividends and similar distributions paid or declared to policyholders. The term "paid or declared" shall be construed according to the method regularly employed in keeping the books of the insurance company;

(4) **Net income.** The term "net income" means the gross investment income less—

(A) **Tax-free interest.** The amount of interest which under section 22

(b) (4) is excluded for the taxable year from gross income;

(B) **Investment expenses.** Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this subparagraph shall not exceed one-fourth of 1 per centum of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which net income computed without any deduction for investment expenses allowed by this subparagraph, or for tax-free interest allowed by subsection (b) (4) (A), exceeds $3\frac{3}{4}$ per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

(C) **Real estate expenses.** Taxes and other expenses paid or accrued during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid or accrued by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

(D) **Depreciation.** A reasonable allowance, as provided in section 23 (l), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence;

(E) **Interest paid or accrued.** All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this chapter.

(F) **Capital losses.** Capital losses to the extent provided in section 117 plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall

be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of interest, dividends, rents, and net premiums received. In the application of section 117(e) for the purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(i) the corporation surtax net income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(ii) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(c) **Rental value of real estate.** The deduction under subsection (b) (4) (C) or (b) (4) (D) of this section on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by this section, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

(d) **Amortization of premium and accrual of discount.** The gross amount of income during the taxable year from interest, the deduction provided in subsection (b) (4) (A), and the credit allowed against net income in section 26(a) shall each be decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by this section. Such amortization and accrual shall be determined (1) in accordance with the method regularly employed by such company, if such method is reasonable, and (2) in all other cases, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(e) **Deductions of foreign corporations.** In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States.

(f) **Double deductions.** Nothing in this section shall be construed to permit the same item to be twice deducted.

(g) **Credits under section 26.** For the purposes of this section, in computing normal tax net income and corporation surtax net income, the credits provided in section 26 shall be allowed in the manner and to the extent provided in sections 13(a) and 15(a). 53 Stat. 74, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 205, 53 Stat. 865; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 165(b), 56 Stat. 872; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 135(d) (e), 58 Stat. 52, 53; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 121(b), 59 Stat. 568; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. I, § 121(d) (1, 2), 64 Stat. 917; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 201(b), 64 Stat. 1216; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 121(c), 65 Stat. 466.

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Historical Note

References in Text. Subchapter E of chapter 2, referred to in subsec. (a) (2) (B), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, §§ 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761, and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 658.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 121(c) (1), to increase both normal and surtax rates on mutual insurance companies other than life.

Subsec. (a) (3) amended by Acts Oct. 20, 1951, § 121(c) (2), Jan. 3, 1951, § 201 (b), Act Oct. 20, 1951 increased both the normal and surtax rates on interinsurers and reciprocal underwriters. Act Jan. 3, 1951, increased surtax rate by 3 percentage points from 30 to 33 per centum.

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 121(d) (1), which struck out subpars. (A) and (B) and inserted new subpars. (A) and (B) to reflect the normal tax rates and surtax rates applicable to mutual insurance companies for taxable years beginning after June 30, 1950, and for calendar year 1950.

Subsec. (a) (3) amended by Act Sept. 23, 1950, § 121(d) (2), which struck out subpars. (A) and (B) and inserted new subpars. (A) and (B) to reflect the normal tax rates and surtax rates applicable to interinsurers or reciprocal underwriters for taxable years beginning after June 30, 1950, and for calendar year 1950.

1945 Amendment. Subsec. (a) (1) (B) amended generally by Act Nov. 8, 1945, § 121(b) (1).

Subsec. (a) (3) (B) amended by Act Nov. 8, 1945, § 121(b) (2), which struck out "32 per centum" and inserted in lieu thereof "28 per centum".

1944 Amendment. Subsecs. (a), (c) and (d) amended by Act Feb. 25, 1944 Subsec. (a) amended by inserting "or a fire insurance company subject to the tax imposed by section 204" following "other than a life or a marine insurance company" and "other than a life or marine insurance company" wherever appearing. Subsecs. (c) and (d) amended by striking out "other than life and marine" wherever appearing and inserting in lieu thereof "subject to the tax imposed by this section".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1939 Amendment. Subsec. (a) amended by Act June 29, 1939.

Effective Date of 1951 Amendments. Amendment of subsec. (a) (1), (3), by Act Oct. 20, 1951 as applicable to taxable years beginning after Dec. 31, 1950 and ending

after Mar. 31, 1951, see note set out under section 13 of I.R.C.1939.

Amendment of subsec. (a) (3) (A) (ii) by Act Jan. 3, 1951, as applicable with respect to taxable years beginning on or after July 1, 1950, see note set out under section 15 of I.R.C.1939.

Effective Date of 1950 Amendments. Section 121(d) (3) of Act Sept. 23, 1950, provided that amendments of subsec. (a) (1), (3), by said Act Sept. 23, 1950, should apply only with respect to taxable years beginning after June 30, 1950, and to taxable years beginning on Jan. 1, 1950, and ending on Dec. 31, 1950.

Effective Date of 1945 Amendment. Section 121(d) of Act Nov. 8, 1945 provided that the amendment of this section was made applicable with respect to taxable years beginning after Dec. 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Section 135(f) of Act Feb. 25, 1944, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1939 Amendment. Amendment of subsec. (a) made applicable only with respect to taxable years beginning after Dec. 31, 1939 by section 229 of Act June 29, 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat. 937

1944—Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history, and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Jan. 3, 1951, 1950 U.S. Code Cong. Service, p. 4027; Nov. 8, 1945, 1945 Code Cong. Service, p. 814.

§ 208. Repealed. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 163(b) (2), 56 Stat. 870

Historical Note

Section, added June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 211(e) (2), 53 Stat. 868, related to benefit of deduction allowed to insurance companies for net operating losses.

Effective Date. The repeal of this section by Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS

§ 211. Tax on nonresident alien individuals

(a) No United States business or office

(1) General rule

(A) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12 upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 30 per centum of such amount, except that such rate shall be reduced, in the case of a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(B) **Capital gains of aliens temporarily present in the United States.** In the case of a nonresident alien individual not engaged in trade or business in the United States, there shall be levied, collected, and paid for each taxable year, in addition to the tax imposed by subparagraph (A)—

(i) if he is present in the United States for a period or periods aggregating less than ninety days during such taxable year—a tax of 30 per centum of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected during his presence in the United States exceed his losses, allocable to sources within the United States, from such sales or exchanges effected during such presence; or

(ii) if he is present in the United States for a period or periods aggregating ninety days or more during such taxable year—a tax of 30 per centum of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during such year exceed his losses, allocable to sources within the United States, from such sales or exchanges effected at any time during such year.

For the purposes of this subparagraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such individual were engaged in trade or business in the United States, except that such gains and losses shall be computed without regard to the provisions of section 117 (b) and such losses shall be determined without the benefits of the capital loss carry-over provided in section 117 (e).

(C) **Cross reference.** For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

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(2) **Aggregate more than \$15,400.** The taxes imposed by paragraph (1) shall not apply to any individual if during the taxable year the sum of—

(A) the aggregate amount received from the sources specified in paragraph (1) (A), plus

(B) the amount, determined in accordance with the provisions of paragraph (1) (B), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges, is more than \$15,400.

(3) **Residents of certain countries.** The provisions of paragraph (2) shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise.

(b) **United States business or office.** A nonresident alien individual engaged in trade or business in the United States shall be taxable without regard to the provisions of subsection (a). As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting, through a resident broker, commission agent, or custodian, of transactions in the United States in commodities (if of a kind customarily dealt in on an organized commodity exchange, if the transaction is of the kind customarily consummated at such place, and if the alien, partnership, or corporation has no office or place of business in the United States at any time during the taxable year through which or by the direction of which such transactions in commodities are effected), or in stocks or securities.

(c) **No United States business or office and gross income of more than \$15,400.** A nonresident alien individual not engaged in trade or business within the United States shall be taxable without regard to the provisions of subsection (a) (1) if during the taxable year the sum of the aggregate amount received from the sources specified in subsection (a) (1) (A), plus the amount (determined in accordance with the provisions of subsection (a) (1) (B)) by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges, is more than \$15,400, except that—

(1) The gross income shall include only income from the sources specified in subsection (a) (1) (A) plus any gain (to the extent provided in section 117) from a sale or exchange of a capital asset if such gain would be taken into account were the tax being determined under subsection (a) (1) (B);

(2) The deductions (other than the so-called "charitable deduction" provided in section 213 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a) (1) (A), except that any loss from the sale or exchange of a capital asset shall be allowed (to the extent provided in section 117 without the benefit of the capital loss carry-over provided in section 117 (e)) if such loss would be taken into account were the tax being determined under subsection (a) (1) (B);

(3) The tax imposed by this chapter (under sections 11 and 12, or under section 117 (c)) shall, in no case, be less than 30 per centum of the sum of—

(A) the aggregate amount received from the sources specified in subsection (a) (1) (A), plus

(B) the amount, determined in accordance with the provisions of subsection (a) (1) (B), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges; and

(4) This subsection shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise. 53 Stat. 75, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 4, 54 Stat. 518; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 105, 109, 55 Stat. 694, 695; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 106, 160(d, e), 167, 56 Stat. 807, 808, 861, 875; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 213 (a, b), 64 Stat. 936.

Historical Note

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 213(a), to broaden the taxable income base of nonresident aliens who have been present in the United States at some time during the taxable year but who have not engaged in trade or business therein.

Subsec. (a) (2) amended by Act Sept. 23, 1950, § 213(b), to make the 30 per cent tax of subsection (a) (1) inapplicable when the aggregate of the amount of fixed or determinable income subject to the tax is less than \$15,400.

Subsec. (c) (1)-(3) amended by Act Sept. 23, 1950, § 213(b) (2), to incorporate rules for taking into cognizance the net amount of capital gains in the determination of the amount of \$15,400.

1942 Amendment. Subsecs. (a) (1) (A), (2), (b) and (c) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, §§ 105(a), 109(a). Said section 105(a) affected only par. (A).

Subsec. (a) (2) amended by Act Sept. 20, 1941, § 105(b).

Subsec. (a) (3) amended by Act Sept. 20, 1941, § 109(b).

Subsec. (c) amended by Act Sept. 20, 1941, §§ 105(c), 109(c). Said section 109 (c) affected only par. (4).

1940 Amendment. Subsec. (a) (1) (A) amended by Act June 25, 1940, which inserted "15 per centum" in lieu of "10 per centum."

Subsec. (a) (2) amended by Act June 25, 1940, which substituted "\$24,000" for "\$21,600."

Subsec. (c) amended by Act June 25, 1940, which inserted "\$24,000" in lieu of "\$21,600" and "15 per centum" in lieu of "10 per centum."

Effective Date of 1950 Amendments. Section 213(d) of Act Sept. 23, 1950, provided that the amendments of subsecs.

(a) (1) (B), (2), and (c) (1)-(3) of this section and section 217(b) should be effective with respect to taxable years beginning after Dec. 31, 1949.

Effective Date of 1942 Amendment. Amendment of subsec. (a) (1) (A) by Act Oct. 21, 1942, § 106(a), substituting "30 per centum" for "27½ per centum", was made applicable with respect to amounts received after the ninth day after Oct. 21, 1942, 4:30 p. m., E.W.T., regardless of whether the taxable year of the recipient begins before Jan. 1, 1942, or after Dec. 31, 1941, by section 106(a) of said Act Oct. 21, 1942.

Amendment of subsec. (a) (2) by Act Oct. 21, 1942, § 106(b), substituting "\$15,400" for "\$23,000", was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Amendments of subsecs. (a) (1) (A) and (c), striking out "and not having an office or place of business therein", and subsec. (b) affecting last sentence, by Act Oct. 21, 1942, §§ 160(e), 167, were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

In the application of the amendment to subsec. (c) by Act Oct. 21, 1942, § 106(c) substituting "\$15,400" for "\$23,000" and "30" for "27½", it was provided that the rate should be 27½ per centum with respect to the period ending with the ninth day after Oct. 21, 1942, 4:30 p. m., E.W.T., and should be 30 per centum with respect to the period after such day.

Effective Date of 1941 Amendment. Act Sept. 20, 1941 was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of Internal Revenue Code], shall

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be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following acts:

1942—Oct. 21, 1942, 4:30 p. m., E W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E S.T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3033.

§ 212. Gross income

(a) **General rule.** In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.

(b) **Exclusions.** The following items shall not be included in gross income of a nonresident alien individual and shall be exempt from taxation under this chapter:

(1) **Ships under foreign flag.** Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States;

(2) **Aircraft of foreign registry.** Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States. 53 Stat. 76, amended May 4, 1948, c. 257, § 1(a), 62 Stat. 210.

Historical Note

1948 Amendment. Subsec. (b) amended by Act May 4, 1948, which extends to earnings of aircraft under foreign registry the reciprocal income tax exemption granted to earnings of ships under foreign flag since 1921.

Effective Date of 1948 Amendment. Section 2 of Act May 4, 1948, provided that the amendment of this section by said Act May 4, 1948, should be applica-

ble with respect to taxable years beginning after Dec. 31, 1945

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 4, 1948, see 1948 U.S.Code Cong Service, p. 1515.

§ 213. Deductions

(a) **General rule.** In the case of a nonresident alien individual the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Losses

(1) The deduction, for losses not connected with the trade or business if incurred in transactions entered into for profit, allowed by section 23(e) (2) shall be allowed whether or not connected with income from sources within the United States, but only if the profit, if such transaction had resulted in a profit, would be taxable under this chapter.

(2) The deduction for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 23(e) (3), shall be allowed whether or not connected

with income from sources within the United States, but only if the loss is of property within the United States.

(c) Charitable, etc., contributions. The so-called "charitable contribution" deduction allowed by section 23(o) shall be allowed whether or not connected with income from sources within the United States, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States, or to the vocational rehabilitation fund.

(d) Standard deduction. The standard deduction provided in section 23(aa) shall not be allowed. 53 Stat. 76, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 9(d), 58 Stat. 238.

Historical Note

1944 Amendment. Subsec. (d) added by Act May 29, 1944.

Effective Date of 1944 Amendment. Amendment adding subsec. (d) made applicable to taxable years beginning after Dec. 31, 1943, by section 2 of Act May 29, 1944.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S. Code Cong Service, p. 1056.

§ 214. Credits against net income

In the case of a nonresident alien individual who is not a resident of a contiguous country, only one exemption under section 25(b) shall be allowed. 53 Stat. 77, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 6(b), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 111(b), 55 Stat. 696; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 131(a) (2), 56 Stat. 828; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 10(f), 58 Stat. 239; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (7), 59 Stat. 559.

Historical Note

1945 Amendment. Act Nov. 8, 1945, amended section generally.

1944 Amendment. Act May 29, 1944, amended section generally to provide that the normal tax exemption and the surtax exemption shall each be \$500, and the exemption for dependents shall not be allowed unless the alien is a resident of a contiguous country.

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1941 Amendment. Act Sept. 20, 1941, substituted "\$750" for "\$800".

1940 Amendment. Act June 25, 1940, substituted "\$800" for "\$1,000."

Effective Date of 1945 Amendment. Amendment by Act Nov. 8, 1945, was made applicable to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable

to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of Internal Revenue Code], shall be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 8, 54 Stat. 520.

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Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, see 1945 U.S. Code Cong. Service p. 814. See, also, Act May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 215. Allowance of deductions and credits

(a) **Return to contain information.** A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this chapter only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(b) **Tax withheld at source.** The benefit of the exemptions under section 25(b) may, in the discretion of the Commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent. 53 Stat. 77, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 10(g), 58 Stat. 240; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (8), 59 Stat. 559.

Historical Note

1945 Amendment. Subsec. (b) amended by Act Nov. 8, 1945, which substituted "the exemptions under section 25(b)" for "normal tax exemption and the surtax exemptions".

1944 Amendment. Subsec. (b) amended by Act May 29, 1944, which struck out "the personal exemption and credit for dependents", and inserted in lieu thereof "the normal tax exemption and the surtax exemptions".

Effective Date of 1945 Amendment. Act Nov. 8, 1945, was made applicable to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in

1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, see 1945 U.S. Code Cong. Service p. 814. See, also, Act May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 216. Credits against tax

A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. A nonresident alien individual shall be allowed as a credit against his tax the amount required by section 396 to be paid by the personal service corporation of which he is a shareholder with respect to his tax liability under Supplement S. 53 Stat. 77, amended Oct. 3, 1940, 11 p. m., E. S. T., c. 757, Title V, § 504, 54 Stat. 1007.

Historical Note

1940 Amendment. Last sentence added by Act Oct. 8, 1940.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 217. Returns

(a) **Requirement.** In the case of a nonresident alien individual with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable, the return, in lieu of the time prescribed in section 53(a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if

the return is made on the basis of the calendar year, then on or before the fifteenth day of June.

(b) **Exemption from requirement.** Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, nonresident alien individuals subject to the tax imposed by section 211 (a) (1) (A) may be exempted from the requirement of filing returns of such tax. 53 Stat. 77, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(e) (1), 57 Stat. 144; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 213(c), 64 Stat. 937.

Historical Note

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, which substituted "section 211(a) (1) (A)" in lieu of "section 211(a)".

1943 Amendment. Subsec. (a) amended by Act June 9, 1943, which inserted "with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable."

Effective Date of 1950 Amendment. Section 213(d) of Act Sept. 23, 1950, provided that the amendments of subsec. (b) of this section should be effective with respect to taxable years beginning after Dec. 31, 1949.

Effective Date of 1943 Amendment. Amendment of subsec. (a) by Act June 9,

1943, was made effective with respect to taxable years beginning after Dec. 31, 1942, by section 5(f) thereof.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053.

§ 218. Payment of tax

(a) **Time of payment.** In the case of a nonresident alien individual with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable, the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56(a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) Withholding at source

For withholding at source of tax on income of nonresident aliens, see section 143. 53 Stat. 77, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(e) (2), 57 Stat. 144.

Historical Note

1943 Amendment. Subsec. (a) amended by Act June 9, 1943, which inserted "with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable".

Effective Date of 1943 Amendment. Amendment of subsec. (a) by Act June

9, 1943, was made effective with respect to taxable years beginning after Dec. 31, 1942, by section 5(f) thereof.

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 219. Partnerships

For the purpose of this chapter, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged. 53 Stat. 78, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 160(f), 56 Stat. 861.

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Historical Note

1942 Amendment. Words, "and as having an office or place of business within the United States if the partnership of which he is a member has such an office or place of business" were omitted by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No

amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States"

Text of Ammendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 220. Alien residents of Puerto Rico

(a) No application to certain alien residents of Puerto Rico. The provisions of this supplement shall have no application to an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, and such alien shall be subject to the taxes imposed by sections 11 and 12.

(b) Cross reference. For exclusion from gross income of income derived from sources within Puerto Rico, see section 116(1) (1). Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(d), 64 Stat. 945.

Historical Note

Effective Date. Section as effective with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23,

1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 221. Foreign educational, charitable and certain other exempt organizations

For special provisions relating to foreign educational, charitable and other exempt trusts, see section 421 (d). Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. I, § 301(c) (5), 64 Stat. 953.

Historical Note

Effective Date. Section as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950]

shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong Service, p. 3053.

SUPPLEMENT I.—FOREIGN CORPORATIONS

§ 231. Tax on foreign corporations

(a) Nonresident corporations—

(1) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 30 per centum of such amount, except that in the case of corporations organized under

the laws of any country in North, Central, or South America, or in the West Indies, or of Newfoundland such rate with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(2) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(b) Resident corporations. A foreign corporation engaged in trade or business within the United States shall be taxable as provided in section 13 and section 15.

(c) Gross income. In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

(d) Exclusions. The following items shall not be included in gross income of a foreign corporation and shall be exempt from taxation under this chapter:

(1) Ships under foreign flag. Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States;

(2) Aircraft of foreign registry. Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States. 53 Stat. 78, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 206, 53 Stat. 866; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 3(c), 54 Stat. 517; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 104(d), 106, 109(a), 55 Stat. 694, 695; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 107, 160(d, e), 56 Stat. 808, 861; May 4, 1948, c. 257, § 1(b), 62 Stat. 210; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(g) (5), 64 Stat. 919.

Historical Note

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, which substituted "section 13" in lieu of "section 14(c) (1)".

1948 Amendment. Subsec. (d) amended by Act May 4, 1948, which extends to earning of aircraft under foreign registry the reciprocal income tax exemption granted to earnings of ships under foreign flag since 1921.

1942 Amendment. Subsecs. (a) and (b) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, §§ 106, 109 (a) which increased the rate of tax from "15 per centum" to "27½ per centum" and substituted the words "any country in North, Central, or South America, or in the West Indies, or of Newfoundland" for the words "a contiguous country".

Subsec. (b) amended by Act Sept. 20, 1941, § 104(d), which added reference "and section 15" at the end thereof.

1940 Amendment. Subsec. (a) (1) amended by Act June 25, 1940, which struck out "except that in the case of dividends the rate shall be 10 per centum, and" after "a tax of 15 per centum of such amount" and struck out "of 10 per centum" after "such rate" in last clause.

1939 Amendment. Subsec. (b) amended by Act June 29, 1939.

Effective Date of 1950 Amendments. Section 121(g) (5) of Act Sept. 23, 1950, provided in part that the amendment of subsec. (b) of this section by said Act Sept. 23, 1950 should be effective with respect to taxable years beginning after June 30, 1950, and with respect to taxable years beginning on Jan. 1, 1950, and ending on Dec. 31, 1950.

Effective Date of 1948 Amendments. Section 2 of Act May 4, 1948, provided that the amendment of this section by said Act May 4, 1948, should be applicable with respect to taxable years beginning after Dec. 31, 1945.

Effective Date of 1942 Amendment. Amendment of subsec. (a), substituting "30" per centum for "27½", by Act Oct. 21, 1942, § 107, was made applicable with respect to amounts received after the ninth day after Oct. 21, 1942, 4:30 p. m., E. W. T., regardless of whether the taxable year of the recipient begins before Jan. 1, 1942, or after Dec. 31, 1941, by section 107 of said Act Oct. 21, 1942.

Amendments of subsecs. (a) and (b), striking out "and not having an office or place of business therein" from subsec. (a), and "or having an office or place of business therein" from subsec. (b), by Act Oct. 21, 1942, § 160(d, e), were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

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Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1—9 of 1940 Act], except the amendments made by section 5 [sections 143, 144 of Internal Revenue Code], shall be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of subsec (b) of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amend-

ment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4 30 p m., E. W. T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12 15 p m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U S Code Cong. Service, p. 3053. See, also, Act May 4, 1948, 1948 U. S. Code Cong. Service, p. 1515.

§ 232. Deductions

(a) **In general.** In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Charitable, and so forth, contributions.** The so-called "charitable contribution" deduction allowed by section 23(q) shall be allowed whether or not connected with income from sources within the United States. 53 Stat. 78.

§ 233. Allowance of deductions and credits

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this chapter only by filing or causing to be filed with the collector a true and accurate return of its total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits. 53 Stat. 79.

§ 234. Credits against tax

Foreign corporations shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. A foreign corporation shall be allowed as a credit against its tax the amount required by section 396 to be paid by the personal service corporation of which it is a shareholder with respect to its tax liability under Supplement S. 53 Stat. 79, amended Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 505, 54 Stat. 1007.

Historical Note

1940 Amendment. Last sentence added by Act Oct. 8, 1940.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 235. Returns

(a) **Time of filing.** In the case of a foreign corporation not having any office or place of business in the United States the return, in lieu of the time prescribed in section 53(a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year then on or before the fifteenth day of June. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent.

(b) **Exemption from requirement.** Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, corporations subject to the tax imposed by section 231(a) may be exempted from the requirement of filing returns of such tax. 53 Stat. 79.

§ 236. Payment of tax

(a) **Time of payment.** In the case of a foreign corporation not having any office or place of business in the United States the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56(a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) Withholding at source

For withholding at source of tax on income of foreign corporations, see section 144 53 Stat. 79.

§ 237. Foreign insurance companies

For special provisions relating to foreign insurance companies, see Supplement G. 53 Stat. 79.

§ 238. Foreign educational, charitable and certain other exempt organizations

For special provisions relating to foreign educational, charitable and certain other exempt organizations, see section 421 (d). Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. I, § 301 (c) (6), 64 Stat. 953.

Historical Note

Codification. Former section 238, Act. Feb. 10 1939, c. 2, § 238, 53 Stat. 79, which was repealed by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 159(c), 56 Stat. 860, and made applicable only with respect to taxable years beginning after Dec. 31, 1941, by section 101 of said Act Oct. 21, 1942, provided as follows:

"A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of section 141."

Effective Date. Section as applicable with respect to taxable years beginning

after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES**§ 251. Income from sources within possessions of United States**

(a) **General rule.** In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

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(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) **Amounts received in United States.** Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) **Tax in case of corporations—**

(1) **Corporation tax.** A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14(b), and under section 15.

(2) **Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(d) **Definition.** As used in this section the term "possession of the United States" does not include the Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico.

(e) **Deductions.** (1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement H in the case of a nonresident alien individual engaged in trade or business within the United States.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States.

(f) **Credits against net income.** A citizen of the United States entitled to the benefits of this section shall be allowed only one exemption under section 25(b).

(g) **Allowance of deductions and credits.** Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this chapter only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(h) **Credits against tax.** Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131.

(i) **Prisoners of war and internees.** In the case of a citizen of the United States taken as a prisoner of war while serving within a possession of the United States as a member of the military or naval forces of the United States, and in the case of a citizen interned by the enemy while serving as an employee within a possession of the United States—

(1) if such citizen was confined in any place not within a possession of the United States, such place of confinement shall, for the purposes of this section, be considered as within a possession of the United States; and

(2) any compensation received within the United States by such citizen attributable to the period of time during which such citizen was a prisoner of war or interned by the enemy shall, for the purposes of subsection (b), be considered as compensation received outside the United States.

(j) **Employees of United States.** For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States. 53 Stat. 79, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 207, 53 Stat. 866; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 6(c), 54 Stat. 519; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, §§ 104(e), 111(c), 55 Stat. 694, 696; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 131(a) (3), 159(d), 160(d), 56 Stat. 828, 860, 861; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 10(h), 58 Stat. 240; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (9), 59 Stat. 559; Aug. 1, 1947, c. 430, § 1, 61 Stat. 714; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 220, 221(a), 64 Stat. 944.

Historical Note

1950 Amendment. Subsec. (d) amended by Act Sept. 23, 1950, § 221(a), to redefine term "possession of the United States".

Subsec. (j) added by Act Sept. 23, 1950, § 220.

1947 Amendment. Subsec. (i) added by Act Aug. 1, 1947.

1945 Amendment. Subsec. (f) amended generally by Act Nov. 8, 1945.

1944 Amendment. Subsec. (f) amended generally by Act May 29, 1944, to incorporate the normal tax exemption and surtax exemption of \$500 each.

1942 Amendment. Subsec. (e) amended by Act Oct. 21, 1942, which struck out "or having an office or place of business therein" following the words "engaged in trade or business within the United States".

Subsec. (f) amended by Act Oct. 21, 1942, which reduced the personal exemption from "\$750" to "\$500".

Subsec. (i) repealed by Act Oct. 21, 1942. Prior to its repeal, said subsec. provided as follows: "(i) **Affiliation.** A corporation entitled to the benefits of this section shall not be deemed to be affiliated with any other corporation within the meaning of section 141."

1941 Amendment. Subsec. (c) (1) amended by Act Sept. 20, 1941, § 104(e), which added the reference "and under section 15" at the end thereof.

Subsec. (f) amended by Act Sept. 20, 1941, § 111(c), which substituted "\$750" for "\$800".

1940 Amendment. Subsec. (f) amended by Act June 25, 1940, which substituted "\$800" for "\$1,000".

1939 Amendment. Subsec. (c) (1) amended by Act June 29, 1939, which substituted "shall be subject to tax under section 13 or section 14(b)" for "shall be taxable as provided in section 14(d)."

Effective Date of 1950 Amendments. Section 221(k) of Act Sept. 23, 1950, provided in part that the amendments of subsec. (d) of this section and sections 58(a), 116f, 131(a) (2), (3), 143(a) (1), (b), 220, 252(a), and 481(a) (7) of I.R.C. 1939 and section 411(a) (7) of Title 42, The Public Health and Welfare, should be applicable with respect to taxable years beginning after Dec. 31, 1950.

Section 220 of Act Sept. 23, 1950, as amended July 23, 1951, c. 238, 65 Stat. 124, provided in part that the addition of subsec. (j) should be effective with respect to taxable years beginning after Dec. 31, 1950.

Effective Date of 1947 Amendment. Section 2 of Act Aug. 1, 1947, provided that the Amendment made by section 1 of said Act Aug. 1, 1947 should be applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, was made applicable to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C. 1939.

Effective Date of 1944 Amendment. Act May 29, 1944, § 10(h), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

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Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendment. Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 6 [sections 143, 144 of Internal Revenue Code], shall be applicable only with respect to taxable years beginning after December 31, 1939", by section 9 of said Act.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of subsec 9(c) (1) of this section should be effective with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where

its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 23, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U. S. Code Cong. Service, p. 3053. See, also, Acts Aug. 1, 1947, 1947 U.S. Code Cong. Service, p. 1533; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 252. Citizens of possessions of United States

(a) Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this chapter only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources. This subsection shall have no application in the case of a citizen of Puerto Rico.

(b) Nothing in this section shall be construed to alter or amend the provisions of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes," approved July 12, 1921, c. 44, 42 Stat. 123 (U.S.C., Title 48, § 1397), relating to the imposition of income taxes in the Virgin Islands of the United States. 53 Stat. 80, amended Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(b), 64 Stat. 944.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, to take Puerto Rico out of the operation of this subsec.

Effective Date of 1950 Amendment. Amendment of section by Act Sept. 23, 1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R.C. 1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS

§ 261. Taxation in general

(a) **Corporation tax.** A corporation organized under the China Trade Act, 1922 (42 Stat. 849; U.S.C., 1934 ed., title 15, ch. 4), shall be subject to tax under section 13 or section 14(b), and under section 15.

(b) **Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

53 Stat. 81, amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 208, 53 Stat. 866; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 104(f) (1), 55 Stat. 694.

Historical Note

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which added the reference "and under section 15" at the end thereof.

1939 Amendment. Subsec. (a) amended by Act June 29, 1939, which substituted "shall be subject to tax under section 13 or section 14(b)" for "shall be taxable as provided in section 14(d)."

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided

that the amendment of subsec. (a) was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 108 of Act Sept. 20, 1941 provided as follows: "No amendment made by this title [sections 101-118 of 1941 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 262. Credit against net income

(a) **Allowance of credit.** For the purpose only of the taxes imposed by sections 13, 14, 15, and 600 of this title and section 106 of the Revenue Act of 1935 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, in addition to the credits against net income otherwise allowed such corporation, a credit against the net income of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 119) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the diminution, by reason of such credit, of the tax imposed by such section 13, 14, or 15 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section; and in no case shall the diminution, by reason of such credit, of the tax imposed by such section 106 or 600 (computed without regard to this section) exceed the amount by which such special dividend exceeds the diminution permitted by this section in the tax imposed by such section 13, 14, or 15.

(b) **Special dividend.** Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special

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dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) **Ownership of stock.** For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

(d) **Definition of China.** As used in this section the term "China" shall have the same meaning as when used in the China Trade Act, 1922. 53 Stat. 81, amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 210(c), 53 Stat. 866; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 104(f) (2), 55 Stat. 694.

Historical Note

References in Text. China Trade Act, 1922, referred to in subsecs. (a), (d), is classified to chapter 4 of Title 15, Commerce and Trade.

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which substituted "sections 13, 14, 15, and 600" for "sections 13, 14, and 600" and "section 13, 14, or 15" for "section 13 or 14."

1939 Amendment. Subsec. (a) amended by Act June 29, 1939, by inclusion of taxes imposed by section 13.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of subsec. (a) was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 108 of Act Sept. 20, 1941, provided as follows: "No amendment made by this title [sections 101-118 of 1941 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 263. Credits against the tax

A corporation organized under the China Trade Act, 1922, shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. 53 Stat. 82.

Historical Note

References in Text. China Trade Act, 1922, referred to in text, is classified to chapter 4 of Title 15, Commerce and Trade.

§ 264. Repealed. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 159(e), 56 Stat. 860.

Historical Note

Section, Act Feb. 10, 1939, c. 2, § 264. 53 Stat. 82, provided that "Affiliation. A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of section 141."

Effective Date. The repeal of this section by Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

§ 265. Income of shareholders

For exclusion of dividends from gross income, see section 116. 53 Stat. 82.

SUPPLEMENT L—ASSESSMENT AND COLLECTION OF DEFICIENCIES

Historical Note

Treaty Obligations. Section 109 of Act Oct. 21, 1942, 4.30 p. m., E.W.T., c. 619, Title I, 56 Stat. 808, provided as follows: "No amendment made by this ti-

tle [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 271. Definition of deficiency

(a) **In general.** As used in this chapter in respect of a tax imposed by this chapter, "deficiency" means the amount by which the tax imposed by this chapter exceeds the excess of—

(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b) (2), made.

(b) **Rules for application of subsection (a).** For the purposes of this section—

(1) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 35, and without regard to so much of the credit under section 32 as exceeds 2 per centum of the interest on obligations described in section 143(a);

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this chapter was less than the excess of the amount specified in subsection (a) (1) over the amount of rebates previously made; and

(3) The computation by the collector, pursuant to section 51(f), of the tax imposed by this chapter shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return. 53 Stat. 82, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 14(a), 58 Stat. 245.

Historical Note

1944 Amendment. Section amended generally by Act May 29, 1944, which among other changes omitted subsec. (b) and inserted in lieu thereof a new subsec. (b).

Effective Date of 1944 Amendments. Act May 29, 1944, § 14, provided in part: "The amendments made by subsections (a), (c), and (d) [to sections 271, 292(a), and 322(d), respectively], shall be applicable with respect to taxable years beginning after December 31, 1942. In the application of the amendments made by this section in the case of taxable years

beginning in 1943, 'section 35' in the amendment made by subsection (a) [to this section] shall be read as 'section 35' and section 466(e)."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong.Service, p. 1056.

§ 272. Procedure in general

[(a) (1) **Petition to The Tax Court of the United States.**] ¹ If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with The Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court

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for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

(2) Cross references

For exceptions to the restrictions imposed by this subsection, see—Subsection (d) of this section, relating to waivers by the taxpayer;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

Section 273, relating to jeopardy assessments;

Section 274, relating to bankruptcy and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Tax Court pending court review.

[**(b) Collection of deficiency found by Tax Court.**]¹ If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) Failure to file petition. If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) Waiver of restrictions. The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) Increase of deficiency after notice mailed. The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed—if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) Further deficiency letters restricted. If the Commissioner has mailed to the taxpayer notice of a deficiency as provided in subsection (a) of this section, and the taxpayer files a petition with the Tax Court within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same taxable year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Tax Court, or in section 273(c), relating to the making of jeopardy assessments. If the taxpayer is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has

been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 322(c), prohibiting credits or refunds after petition to the Tax Court) as a notice of a deficiency, and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) **Jurisdiction over other taxable years.** The Tax Court in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

[(h) **Final decisions of Tax Court.**] ¹ For the purposes of this chapter the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 1140.

(i) **Prorating of deficiency to installments.** If the taxpayer has elected to pay the tax in installments and a deficiency has been assessed, the deficiency shall be prorated to the four installments. Except as provided in section 273 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived, shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived, shall be paid upon notice and demand from the collector.

(j) **Extension of time for payment of deficiencies.** Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary, may grant an extension for the payment of such deficiency for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(k) **Address for notice of deficiency.** In the absence of notice to the Commissioner under section 312(a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. 53 Stat. 82, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 168(a), Title V, § 504(a), (c), 56 Stat. 876, 957; Dec. 29, 1945, c. 652, Title II, § 203(a), 59 Stat. 673.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1945 Amendment. Subsec. (a) (1) amended by Act Dec. 29, 1945, which inserted "Saturday," preceding "Sunday" within the parenthesis in the second sentence.

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942, § 168(a), which added sentence beginning "If the notice is addressed".

§ 272 INCOME TAX—SUPPLEMENT PROVISIONS

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsecs., see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1945 Amendment. Act Dec. 29, 1945, was made effective as of Sept. 8, 1945, by section 203 (b) thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, § 163(a), was made applicable with respect to notices of deficiency mailed after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 163(b) thereof.

Extension of Time for Payment of Deficiencies. Act May 28, 1938, c. 289, § 816, 52 Stat. 578, provided that 30 days after enactment of the 1938 Act the requirement of section 272(j) of the 1936, 1934, 1932, and 1928 Acts, section 274(k) of the 1926 Act, section 274(g) of the 1924 Act, section 250(f) of the 1921 Act,

that the Secretary approve an extension of time for payment of deficiency in income, estate, or gift taxes should not apply, but that approval should be by the Commissioner under regulations prescribed by him with the approval of the Secretary.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Dec. 29, 1945, see 1945 U.S.Code Cong.Service, p. 846.

§ 273. Jeopardy assessments

(a) **Authority for making.** If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **Deficiency letters.** If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 272(a), then the Commissioner shall mail a notice under such subsection within sixty days after the making of the assessment.

[(c) **Amount assessable before decision of Tax Court.**]¹ The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 272(f) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Commissioner may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

[(d) **Amount assessable after decision of Tax Court.**]¹ If the jeopardy assessment is made after the decision of the Tax Court is rendered such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) **Expiration of right to assess.** A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) **Bond to stay collection.** When a jeopardy assessment has been made the taxpayer, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding

double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Tax Court which has become final, together with interest thereon as provided in section 297. If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Tax Court is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) **Same—Further conditions.** If the bond is given before the taxpayer has filed his petition with the Tax Court under section 272(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **Waiver of stay.** Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) **Collection of unpaid amounts.** When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 322, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) **Claims in abatement.** No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter.

(a)² **Abatement if jeopardy does not exist.** The Secretary may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of The Tax Court of the United States in respect of the deficiency has been rendered, or, if no petition is filed with The Tax Court of the United States, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated. 53 Stat. 84, amended Aug. 14, 1953, c. 488, § 1(a), 67 Stat. 583.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

² So in original. Probably should be "(k)".

§ 273 INCOME TAX—SUPPLEMENT PROVISIONS

Historical Note

1953 Amendment. Subsec. (a), "Abatements if Jeopardy does not exist," added by Act Aug. 14, 1953. Probably should be subsec. (k).

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsecs., see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1953 Amendment. Section 1(c) of Act Aug. 14, 1953 provided that the amendments to this section by

said Act should be applicable to jeopardy assessments made or in existence on Aug. 14, 1953 or which are thereafter made.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 14, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2303.

§ 274. Bankruptcy and receiverships

(a) **Immediate assessment.** Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such taxpayer shall, despite the restrictions imposed by section 272(a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. In such cases the trustee in bankruptcy or receiver shall give notice in writing to the Commissioner of the adjudication of bankruptcy or the appointment of the receiver, and the running of the statute of limitations on the making of assessments shall be suspended for the period from the date of adjudication in bankruptcy or the appointment of the receiver to a date 30 days after the date upon which the notice from the trustee or receiver is received by the Commissioner; but the suspension under this sentence shall in no case be for a period in excess of two years. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the adjudication of bankruptcy or the appointment of the receiver.

(b) **Unpaid claims.** Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the taxpayer upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within 6 years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in section 272(j) and section 296 in the case of a deficiency in a tax imposed by this chapter. 53 Stat. 86, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 275. Period of limitation upon assessment and collection

Except as provided in section 276—

(a) **General rule.** The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(b) **Request for prompt assessment.** In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commissioner that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) **Omission from gross income.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

(d) **Constructive dividends.** If the taxpayer omits from gross income an amount properly includible therein—

(1) **Foreign personal-holding companies.** Under section 337(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement P net income of a foreign personal-holding company); or

(2) **Personal service corporations.** Under section 394(b) (relating to the inclusion in the gross income of shareholders of their distributive shares of undistributed Supplement S net income of a personal service corporation);

the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within seven years after the return was filed.

(e) **Distributions in liquidation to shareholders.** If the taxpayer omits from gross income an amount properly includible therein under section 115(c) as an amount distributed in liquidation of a corporation, other than a foreign personal holding company, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within four years after the return was filed.

(f) For the purposes of subsections (a), (b), (c), (d), and (e), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(g) **Corporation and shareholder.** If a corporation makes no return of the tax imposed by this chapter, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. 53 Stat. 86, amended Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 503, 54 Stat. 1007.

§ 275 INCOME TAX—SUPPLEMENT PROVISIONS

Historical Note

1940 Amendment. Subsec. (d) amended by Act Oct. 8, 1940.

Awards Under Railway Mail Pay Act of 1916; Period of Deficiency Assessments. Any deficiency attributable to inclusion of income in any taxable year by reason of application of Act Oct. 20, 1951, 2.07 p. m, E.S.T., c. 521, Title VI, § 611(a), 65 Stat. 117, relating to awards under Railway Mail Pay Act of 1916, may be assessed at any time prior to expiration of the period for assessment with respect to the taxable year of the taxpayer which includes December 4,

1950, notwithstanding this section or other law, see note under section 42 of I. R.C.1032.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 276. Same—Exceptions

(a) **False return or no return.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) **Waiver.** Where before the expiration of the time prescribed in section 275 for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Collection after assessment.** Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) **Net operating loss carry-backs and unused excess profits credit carry-backs.** In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carry-back or an unused excess profits credit carry-back, including deficiencies which may be assessed pursuant to the provisions of section 3780(b) or (c), such deficiency may be assessed—

(1) in case a return was required under subchapter E of chapter 2 for the taxable year of the net operating loss or unused excess profits credit resulting in the carry-back, at any time before the expiration of the period within which (under section 275 or subsection (a) or (b) of this section) a deficiency (with respect to tax imposed either by chapter 1 or by subchapter B or E of chapter 2) for such taxable year (whichever is the longer period) may be assessed; or

(2) in case a return was not required under subchapter E of chapter 2 for the taxable year of the net operating loss or unused excess profits credit resulting in the carry-back, at any time before the expiration of the period within which (under section 275 or subsection (a) or (b) of this section) a deficiency (with respect to tax imposed either by chapter 1 or by subchapter A or B of chapter 2) for such taxable year (whichever is the longer period) may be assessed.

(e) Gain upon sale or exchange of residence. In the case of a deficiency described in section 112(n) (7), such deficiency may be assessed at any time prior to the expiration of the time therein provided.

(f) Involuntary conversion. In the case of a deficiency described in section 112(f) (3) (C) or (D), such deficiency may be assessed at any time prior to the expiration of the time therein provided. 53 Stat. 87, amended July 31, 1945, c. 340, § 5(e), 59 Stat. 525; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(f) (1), 59 Stat. 569; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 318(b) (5), 65 Stat. 497; Oct. 31, 1951, c. 661, § 1(b), 65 Stat. 735.

Historical Note

References in Text. Subchapter E of chapter 2, referred to in subsec. (d), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 224(b), 223(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761, and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1951 Amendments. Subsec. (e) added by Act Oct. 20, 1951.

Subsec. (f) added by Act Oct. 31, 1951.

1945 Amendment. Subsec. (d) added by Act July 31, 1945, and amended generally by Act Nov. 8, 1945.

Effective Date of 1951 Amendment. Addition of subsec. (e) made applicable to taxable years ending after Dec. 31, 1950, by section 318(c) of Act Oct. 20, 1951.

Effective date of subsec. (f) of this section, added by Act Oct. 31, 1951, see note under section 112 of I.R.C.1939.

Effective Date of 1945 Amendments. Amendment of subsec. (d) made applicable with respect to all taxable years beginning after Dec. 31, 1940, by section 122(f) (2) of Act Nov. 8, 1945.

Section 5(f) of Act July 31, 1945, provided: "The amendments made by this section [to sections 276 and 322 of I.R.C. 1939] shall be applicable with respect to all taxable years beginning after Decem-

ber 31, 1940, except that the amendment made by subsection (d) [adding subsec. (g) to section 322 of I.R.C.1939] shall not be applicable to any taxable year with respect to which the taxpayer and the Commissioner have entered into a closing agreement under the provisions of section 3760, prior to the date of enactment of this Act [July 31, 1945], in any case in which it is expressly provided in such closing agreement that the tax liability for such taxable year is not to be affected by a net operating loss carry-back or by an unused excess profits carry-back."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act of Oct. 31, 1951, see 1951 U.S.Code Cong Service, p. 2598. See, also, Acts Oct. 20, 1951, 1951 U.S.Code Cong. Service, p. 1781; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814.

§ 277. Suspension of running of statute

The running of the statute of limitations provided in section 275 or 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 272(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for sixty days thereafter. 53 Stat. 87, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said Act, see section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 291 INCOME TAX—SUPPLEMENT PROVISIONS

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX

§ 291. Failure to file return

(a) In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612(d) (1).

(b) Repealed. May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 6(b) (7), 58 Stat. 235.

53 Stat. 88, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 172(f) (4), 56 Stat. 893; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 6(b) (7), 58 Stat. 235.

Historical Note

1944 Amendment. Subsec. (b) repealed by Act May 29, 1944. Prior to its repeal, said subsec. provided as follows: "(b) For minimum addition to the tax for failure of withholding agent to make and file return required by Part II of Subchapter D, see section 470(c)."

1942 Amendment. Subsec. (a) so designated and subsec. (b) added by Act Oct. 21, 1942.

Effective Date of 1944 Amendment. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective Jan. 1, 1943, applicable to all wages (as defined

in Part II of Subchapter D) paid on or after such date, by section 172(g) thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S.Code Cong.Service, p 1056.

§ 292. Interest on deficiencies

(a) General rule. Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. If any portion of the deficiency assessed is not to be collected by reason of a prior satisfaction, in whole or in part, of the tax, proper adjustment shall be made with respect to the interest on such portion.

(b) Deficiency resulting from relief under section 722. If any part of a deficiency for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be assessed or paid with respect to such part of the

deficiency. If any part of a deficiency for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year (excluding any portion of a deficiency of excess profits taxes constituting a deficiency by reason of deferment of tax under section 710(a) (5), and excluding, in case the taxpayer has availed itself of the benefits of section 710(a) (5), such portion of a deficiency under Chapter 1 as may be determined by the Commissioner to exceed any refund or credit of excess profits tax arising from the operation of section 722), no interest shall be assessed or paid with respect to such part of the deficiency for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later.

(c) **Deficiency Resulting From Carry-Back and Related Matters.** If any part of a deficiency is determined by the Commissioner to be attributable (A) to a carry-back to which an overpayment described in section 3771 (e), or a decrease determined under section 3780(b), in any other tax is attributable, or (B) to an error in the amount or effect of a carry-back which resulted in a credit or refund of an overpayment with interest computed pursuant to section 3771(e), or in a decrease determined under section 3780(b), no interest shall be assessed or paid under subsection (a) with respect to such part of the deficiency for any period during which interest was not allowed with respect to such overpayment or for a period prior to the application of such decrease.

(d) With respect to any corporation entitled to receive payment for the transportation of United States mail, if an award is retroactively received for the transportation of United States mail, and if such award is required to be treated as income in the year or years in which the mail was carried, then, notwithstanding the provisions of subsection (a) of this section, no interest shall be due, with respect to any period prior to thirty days after such award is granted, for tax deficiencies resulting from the inclusion of such additional mail payments retroactively. 53 Stat. 88, amended Dec. 17, 1943, c. 346, § 2(a), 57 Stat. 602; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 14(c), 58 Stat. 246; July 31, 1945, c. 340, § 6(a), 59 Stat. 525; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 611(b), 65 Stat. 568.

Historical Note

References in Text. Sections 710(a) (5) and 722, referred to in subsec. (b), relating to deferment of payment in case of abnormality and general relief under the excess profits tax, were repealed by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1951 Amendment. Subsec. (d) added by Act Oct. 20, 1951.

1945 Amendment. Subsec. (c) added by Act July 31, 1945.

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which inserted last sentence.

1943 Amendment. Act Dec. 17, 1943, amended section by inserting "(a) General Rule" immediately preceding the first par., and by adding subsec. (b).

Effective Date of 1944 Amendment. Subsec. (e) of Act May 29, 1944, § 14, provided in part: "The amendments made by subsections (a), (c), (d) [to sections 271, 292(a), and 322(d)], shall be applicable with respect to taxable

years beginning after December 31, 1942."

Awards Under Railway Mail Pay Act of 1916; Interest on Deficiencies. Notwithstanding this section, no interest shall be assessed or collected for any period prior to July 1, 1951, with respect to that part of any deficiency which the Secretary determines to be attributable to the inclusion of income in a taxable year by reason of application of Act Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 611(a), 65 Stat. 568 relating to awards under Railway Mail Pay Act of 1916, see Note under section 42 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 292 INCOME TAX—SUPPLEMENT PROVISIONS

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.

Code Cong Service, p. 1781. See, also, Act May 29, 1944, 1944 U.S Code Cong. Service, p. 1056

§ 293. Additions to the tax in case of deficiency

(a) **Negligence.** If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 272(i), relating to the prorating of a deficiency, and of section 292, relating to interest on deficiencies, shall not be applicable.

(b) **Fraud.** If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d) (2). 53 Stat. 88.

§ 294. Additions to the tax in case of nonpayment

(a) Tax shown on return

(1) **General rule.** Where the amount determined by the taxpayer as the tax imposed by this chapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) **If extension granted.** Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 295, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(3-5) Omitted. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 118(a), 58 Stat. 37.

(b) **Deficiency.** Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272(i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) **Filing of jeopardy bond.** If a bond is filed, as provided in section 273, the provisions of subsection (b) of this section shall not apply to the amount covered by the bond.

(d) Estimated tax

(1) Failure to file declaration or pay installment of estimated tax

(A) **Failure to file declaration.** In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to rea-

sonable cause and not to willful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

(B) **Failure to pay installments of estimated tax declared.** Where a declaration of estimated tax has been made and filed within the time prescribed, or where a declaration of estimated tax has been made and filed after the time prescribed and the Commissioner has found that failure to make and file such declaration within the time prescribed was due to reasonable cause and not to willful neglect, in the case of a failure to pay an installment of the estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of the unpaid amount of such installment, and in addition 1 per centum of such unpaid amount for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment.

(2) **Substantial underestimate of estimated tax.** If 80 per centum of the tax (determined without regard to the credits under sections 32 and 35), in the case of individuals other than farmers exercising an election under section 60 (a), or $66\frac{2}{3}$ per centum of such tax so determined in the case of such farmers, exceeds the estimated tax (increased by such credits), there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This paragraph shall not apply to the taxable year in which falls the death of the taxpayer, nor, under regulations prescribed by the Commissioner with the approval of the Secretary, shall it apply to the taxable year in which the taxpayer makes a timely payment of estimated tax within or before each quarter (excluding, in case the taxable year begins in 1943, any quarter beginning prior to July 1, 1943) of such year (or in the case of farmers exercising an election under section 60 (a), within the last quarter) in an amount at least as great as though computed (under such regulations) on the basis of the taxpayer's status with respect to the personal exemption and credit for dependents on the date of the filing of the declaration for such taxable year (or in the case of any such farmer, or in case the fifteenth day of the third month of the taxable year occurs after July 1, on July 1 of the taxable year) but otherwise on the basis of the facts shown on his return for the preceding taxable year. In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the 80 per centum and $66\frac{2}{3}$ per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950. In the case of taxable years beginning prior to November 1, 1951, and ending after October 31, 1951, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the requirements of this paragraph by reason of the increase in rates of tax on individuals imposed by the Revenue Act of 1951.

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(3) **Tax on self-employment income.** This subsection shall be applied without regard to the tax imposed by subchapter E, relating to tax on self-employment income.

(e) **Substantial Overstatement of Expected Carry-Backs.** If the time for payment of any tax or taxes for any taxable year is extended under section 3779, there shall be added to such tax or taxes an amount equal to 5 per centum of the penalty portion, if any, of the amount to which such extension relates, unless the taxpayer establishes to the satisfaction of the Commissioner that, as of the end of the taxable year in which such extension was made, there was reasonable cause to expect there would be no such penalty portion. The penalty portion shall be the excess of the amount to which such extension relates which is not paid by the end of the taxable year in which such extension is made over 125 per centum of the amount to which such extension relates which is satisfied by applying thereto a decrease in tax in respect of an application under section 3780(a) less any amounts assessed in respect of such application which are not so satisfied. 53 Stat. 88, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 5(b), 57 Stat. 144; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 118(a), 58 Stat. 37; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, §§ 6(b), (8), 13(b), 58 Stat. 235, 244; July 31, 1945, c. 340, § 4(b), 59 Stat. 523; Aug. 28, 1950, c. 809, Title II, § 208(d) (8), 64 Stat. 545; Jan. 2, 1951, c. 1195, § 2, 64 Stat. 1136; Oct. 20, 1951, 2:07 p. m., E.S.T., Title I, § 103(b), 65 Stat. 465.

Historical Note

References in Text. Section 101 of Revenue Act of 1950, referred to in subsec. (d) (2), is classified to sections 11 and 12(b), (c), (f) of I.R.C.1939.

1951 Amendments. Subsec. (d) (2) amended by Act Oct. 20, 1951, to add last sentence.

Subsec. (d) (2) amended by Act Jan. 2, 1951, which added next to last sentence.

1950 Amendment. Subsec. (d) amended by Act Aug. 28, 1950, which added par. (3).

1945 Amendment. Subsec. (e) added by Act July 31, 1945.

1944 Amendments. Subsec. (a) amended by Act Feb. 25, 1944, which struck out pars. (3), (4), and (5).

Subsec. (d) added by Act Feb. 25, 1944.

Subsec. (d) (1) (A) amended by Act May 29, 1944, which changed last sentence generally to read as now set out.

Subsec. (d) (2) amended by Act May 29, 1944, which struck out "35 and 466 (e)" following "sections 32" and inserted in lieu thereof "and 35".

1943 Amendment. Subsec. (a) amended by Act June 9, 1943, which added pars. (3)-(5).

Effective Date of 1951 Amendment. Amendment as applicable only with respect to taxable years beginning after Oct. 31, 1951, and to taxable years beginning on Jan. 1, 1951, and ending on Dec. 31, 1951, see note set out under section 12 of I.R.C.1939.

Effective Date of 1944 Amendments. Amendment of subsecs. (d) (1) (A) and (d) (2), by Act May 29, 1944, was made

applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Amendment of section by Act Feb. 25, 1944, was made applicable to taxable years beginning after Dec. 31, 1942, by section 118(c) thereof.

Effective Date of 1943 Amendment. Section 5(f) of Act June 9, 1943, provided: "The amendments made by this section [affecting sections 56(b), 58-60, 145(a), 217(a), 218(a), 294(a)] shall be effective with respect to taxable years beginning after December 31, 1942, except that section 294(a) (5) of the Internal Revenue Code [1939] shall not be applicable to a taxable year beginning in 1943 in the case of an individual not required to make a declaration under section 58 of the Internal Revenue Code for such year."

Computation of Tax in Case of Certain Joint Returns. Effective date of 1951 amendments with respect to computation of tax in case of certain joint returns, see note set out under section 12 of I.R.C. 1939.

Underestimating 1944 Tax. Section 13 (e) of Act May 29, 1944 provided: "For the purposes of section 294(d) (2) (relating to underestimate of estimated tax), in the case of a taxpayer filing a declaration for a taxable year beginning in the calendar year 1944 the term '80 per centum of the tax' as appearing in such subsection shall be taken to refer to 80 per centum of whichever of the following is the lesser: (1) a tax computed under the law applicable to such taxable year without regard to the amendments made by this Act [Act May 29, 1944, 7 p. m., E. W. T., c. 210, Part I, § 13(b), 58 Stat. 244], and (2) a tax computed under such law

as amended by this Act [Act May 29, 1944, 7 p. m., E. W. T., c. 210, Part. I, § 13(b), 58 Stat. 244]."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1944—Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 136, 58 Stat. 53.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Jan. 2, 1951, 1950 U.S. Code Cong. Service, p. 4259; Aug. 28, 1950, 1950 U.S. Code Cong. Service, p. 3287; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 295. Time extended for payment of tax shown on return

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 56(c), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. 53 Stat. 89.

§ 296. Time extended for payment of deficiency

If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period. 53 Stat. 89.

§ 297. Interest in case of jeopardy assessments

In the case of the amount collected under section 273(i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 273(i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 292. If the amount included in the notice and demand from the collector under section 273(i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. 53 Stat. 89.

§ 298. Bankruptcy and receiverships

If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 274, is not paid in full within ten days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. 53 Stat. 89.

§ 299. Removal of property or departure from United States

For additions to tax in case of leaving the United States or concealing property in such manner as to hinder collection of the tax, see section 146.
53 Stat. 89.

§ 311 INCOME TAX—SUPPLEMENT PROVISIONS

SUPPLEMENT N.—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES

§ 311. Transferred assets

(a) **Method of collection.** The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **Transferees.** The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

(2) **Fiduciaries.** The liability of a fiduciary under section 3467 of the Revised Statutes, as amended, (U.S.C., Title 31, § 192) in respect of the payment of any such tax from the estate of the taxpayer. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.** The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee of a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;—except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later;

(4) Where before the expiration of the time prescribed in paragraph (1), (2), or (3) for the assessment of the liability, both the Commissioner and the transferee or fiduciary have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Period for assessment against taxpayer.** For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

(d) **Suspension of running of statute of limitations.** The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 272(a), be suspended for the period during which the Commissioner is prohibited from making the assessment

in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for sixty days thereafter.

(e) **Address for notice of liability.** In the absence of notice to the Commissioner under section 312(b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(f) **Definition of "transferee".** As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. 53 Stat. 90, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said Act, see section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 312. Notice of fiduciary relationship

(a) **Fiduciary of taxpayer.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) **Fiduciary of transferee.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 311, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person) until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.** Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. 53 Stat. 91.

§ 313. Cross reference

For prohibition of suits to restrain enforcement of liability of transferee or fiduciary, see section 3653(b).
53 Stat. 91.

SUPPLEMENT O.—OVERPAYMENTS

§ 321. Overpayment of installment

If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 322. 53 Stat. 91.

§ 322 INCOME TAX—SUPPLEMENT PROVISIONS

§ 322. Refunds and credits

(a) Authorization

(1) **Overpayment.** Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(2) **Excessive withholding.** Where the amount of the tax withheld at the source under Subchapter D of Chapter 9 exceeds the taxes imposed by this chapter against which the tax so withheld may be credited under section 35, the amount of such excess shall be considered an overpayment.

(3) **Credits against estimated tax.** The Commissioner is authorized to prescribe, with the approval of the Secretary, regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Commissioner to be an overpayment of the tax for a preceding taxable year.

(4) **Credit for "special refunds" of employee social security tax.** The Commissioner is authorized to prescribe, with the approval of the Secretary, regulations providing for the crediting against the tax imposed by this chapter for any taxable year of the amount determined by the taxpayer or the Commissioner to be allowable under section 1401(d) as a special refund of tax imposed on wages received during the calendar year in which such taxable year begins. If more than one taxable year begins in such calendar year, such amount shall not be allowed under this section as a credit against the tax for any taxable year other than the last taxable year so beginning. The amount allowed as a credit under such regulations shall, for the purposes of this chapter, be considered an amount deducted and withheld at the source as tax under subchapter D of chapter 9.

(b) Limitation on allowance

(1) **Period of limitation.** Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **Limit on amount of credit or refund.** The amount of the credit or refund shall not exceed the portion of the tax paid—

(A) If a return was filed by the taxpayer, and the claim was filed within three years from the time the return was filed, during the three years immediately preceding the filing of the claim.

(B) If a claim was filed, and (i) no return was filed, or (ii) if the claim was not filed within three years from the time the return was filed by the taxpayer, during the two years immediately preceding the filing of the claim.

(C) If no claim was filed and the allowance of credit or refund is made within three years from the time the return was filed by the taxpayer, during the three years immediately preceding the allowance of the credit or refund.

(D) If no claim was filed, and (i) no return was filed or (ii) the allowance of the credit or refund is not made within three years from the time the return was filed by the taxpayer, during the two years immediately preceding the allowance of the credit or refund.

(3) **Exceptions in the case of waivers.** If both the Commissioner and the taxpayer have, within the period prescribed in paragraph (1) for

the filing of a claim for credit or refund, agreed in writing under the provisions of section 276(b) to extend beyond the period prescribed in section 275 the time within which the Commissioner may make an assessment, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, and six months thereafter, except that the provisions of paragraph (1) shall apply to any claim filed, or credit or refund allowed or made, before the execution of such agreement. The amount of the credit or refund shall not exceed the total of the portions of tax paid (A) during the two years immediately preceding the execution of such agreement, or, if such agreement was executed within three years from the time the return was filed, during the three years immediately preceding the execution of such agreement, (B) after the execution of the agreement and before the expiration of the period within which the Commissioner might make an assessment pursuant to such agreement or any extension thereof, and (C) during six months after the expiration of such period, except that the provisions of paragraph (2) shall apply to any claim filed, or credit or refund allowed, before the execution of the agreement. Notwithstanding the foregoing provisions of this paragraph, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall not expire prior to two years after the time the tax was paid, but if a claim is filed, or credit or refund allowed or made if no claim is filed, more than six months after the expiration of the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim is filed, immediately preceding the allowance of the credit or refund.

(4) **Return considered filed on due date.** For the purposes of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. For the purposes of paragraphs (2) and (3) of this subsection, and for the purposes of subsection (d) of this section, an advance payment of any portion of the tax made at the time such return was filed shall be considered as made on the last day prescribed by law for the payment of the tax or, if the taxpayer elected to pay the tax in installments, on the last day prescribed for the payment of the first installment. For the purposes of this paragraph, the last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer.

(5) **Special period of limitation with respect to bad debts and worthless securities.** If the claim for credit or refund relates to an overpayment on account of—

(A) the deductibility by the taxpayer, under section 23(k) (1), section 23(k) (4), or section 204(c), of a debt as a debt which became worthless, or, under section 23(g) (2) or (k) (2), of a loss from worthlessness of a security, or

(B) the effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carry-over, in lieu of the three-year period of limitation prescribed in paragraph (1), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carry-back, the period shall be either seven years from the date prescribed by law for filing the return for the year of the net oper-

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ating loss or the unused excess profits credit which results in such carry-back or the period prescribed in paragraph (6), whichever expires the later. In the case of a claim described in this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(6) Special period of limitation with respect to net operating loss carry-backs and unused excess profits credit carry-backs. If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in lieu of the three-year period of limitation prescribed in paragraph (1), the period shall be that period which ends with the expiration of the fifteenth day of the thirty-ninth month following the end of the taxable year of the net operating loss or the unused excess profits credit which results in such carry-back, or the period prescribed in paragraph (3) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in paragraph (2) or (3), whichever is applicable, to the extent of the amount of the overpayment attributable to such carry-back.

[(c) Effect of petition to Tax Court.]¹ If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272(a) and if the taxpayer files a petition with the Tax Court within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) [Overpayment found by Tax Court.]¹ If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Tax Court determines as part of its decision (1) that such portion was paid (A) within two years before the filing of the claim, the mailing of the notice of deficiency, or the execution of an agreement by both the Commissioner and the taxpayer pursuant to section 276(b) to extend beyond the time prescribed in section 275 the time within which the Commissioner might assess the tax, whichever is earliest, or (B) within three years before the filing of the claim, the mailing of the notice of deficiency, or the execution of the agreement, whichever is earliest, if the claim was filed, the notice of deficiency mailed, or the agreement executed within three years from the time the return was filed by the taxpayer, or (C) after the ex-

execution of such an agreement and before the expiration of the period within which the Commissioner might make an assessment pursuant to such agreement or any extension thereof, or (D) after the mailing of the notice of deficiency; or (2), if such portion was not paid within the period described in clause (1), but the notice of deficiency was mailed within seven years from the time prescribed for the filing of the return, or a claim described in subsection (b) (5) was filed, that such portion does not exceed the amount of the overpayment attributable to the deductibility of items described in subsection (b) (5); or (3), if such portion was not paid within the period described in clause (1), but the notice of deficiency was mailed within the period prescribed in subsection (b) (6) for the filing of a claim for credit or refund of an overpayment attributable to a carry-back, or such a claim was filed, that such portion does not exceed the amount of the overpayment attributable to a carry-back.

(e) **Presumption as to date of payment.** For the purposes of this section, any tax actually deducted and withheld at the source during any calendar year under Subchapter D of Chapter 9 shall, in respect of the recipient of the income, be deemed to have been paid by him not earlier than the fifteenth day of the third month following the close of his taxable year with respect to which such tax is allowable as a credit under section 35. For the purposes of this section, any amount paid as estimated tax for any taxable year shall be deemed to have been paid not earlier than the fifteenth day of the third month following the close of such taxable year.

(f) **Tax withheld at source.** For refund or credit in case of withholding agent, see section 143(f). For refund or credit in case of employer required to deduct and withhold tax on wages, see section 1622(f).

(g) **Overpayments Attributable to Net Operating Loss Carry-Backs and Unused Excess Profits Credit Carry-Backs.** If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carry-back or to an unused excess profits credit carry-back is otherwise prevented by the operation of any law or rule of law other than section 3761, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subsection (b) (6). If the allowance of an application, credit or refund of a decrease in tax determined under section 3780 (b) is otherwise prevented by the operation of any law or rule of law other than section 3761, such application, credit or refund may be allowed or made if application for a tentative carry-back adjustment is made within the period provided in section 3780(a). In the case of any such claim for credit or refund or any such application for a tentative carry-back adjustment, the determination by any court, including The Tax Court of the United States, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction and the unused excess profits credit adjustment, and the effect of such deduction or adjustment, to the extent that such deduction or adjustment is affected by a carry-back which was not in issue in such proceeding. 53 Stat. 91, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 169 (a, b), 172(e), 56 Stat. 876, 877, 893; June 9, 1943, 7 p. m., E. W. T., c. 120, §§ 2(b) (2), 4(a, b), 57 Stat. 139, 140; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, §§ 6(b) (9, 10), 14(d), 58 Stat. 235, 246; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a) (c), 56 Stat. 957; July 31, 1945, c. 340, § 5(a-d), 59 Stat. 523; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 122(e) (1), 59 Stat. 569; Aug. 18, 1950, c. 755, § 1(a), 64 Stat. 464; Aug. 28, 1950, c. 809, Title II, § 206(b) (1), 64 Stat. 538.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

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Historical Note

1950 Amendments. Subsec. (a) amended by Act Aug. 28, 1950, which added subpar. 4.

Subsec. (b) (3) amended by Act Aug. 18, 1950, to make clear that taxpayers who enter into an agreement with the Commissioner extending the time within which an assessment may be made do not thereby subject themselves to a reduction in the period of time otherwise available to them for the filing of a credit or refund claim.

1945 Amendment. Subsec. (b) (5) (B) amended by Act July 31, 1945, which struck out "or of a carry-back" in first sentence, and struck out second sentence and inserted in lieu thereof a new second sentence.

Subsec. (b) (6) amended by Acts Nov. 8, 1945, July 31, 1945. Act Nov. 8, 1945 amended first sentence generally. Act July 31, 1945 added subsec. (b) (6).

Subsec. (d) amended by Act July 31, 1945, which struck out period following "(b) (5)" and inserted in lieu thereof a semicolon and the text following it.

Subsec. (g) added by Act July 31, 1945.

1944 Amendment. Subsec. (a) (2) amended by Act May 29, 1944, which struck out "Part II of Subchapter D or" following "the source under", and "or 466(e)" following "under section 35".

Subsec. (d) amended by Act May 29, 1944, which inserted "or finds that there is a deficiency * * * of such taxable year," following "in respect of which the Commissioner determined the deficiency,".

Subsec. (e) amended by Act May 29, 1944, which struck out "Part II of Subchapter D or" following "calendar year under", and "or section 466(e)" following "under section 35".

1943 Amendments. Subsec. (a) amended by Act June 9, 1943, which affected par. (2) and added par. (3).

Subsec. (e) amended by Act June 9, 1943.

Subsec. (f) amended by Act June 9, 1943, which omitted reference "and 466(f)" from first sentence and added second sentence.

1942 Amendment. Subsecs. (a), (b) (2-5), (d) and (f) amended and subsec. (e) amended and redesignated (f) and new subsec. (e) inserted by Act Oct. 21, 1942, §§ 169(a, b), 172(e).

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1950 Amendments. Section 206(c) of Act Aug. 28, 1950, provided in part that the amendment of subsec. (a) by said Act Aug. 28, 1950 should be applicable only with respect to taxable years beginning after Dec. 31,

1950, and only with respect to "special funds" in the case of wages paid after Dec. 31, 1950.

Section 1(b) of Act Aug. 18, 1950, provided that: "The amendment made by subsection (a) [amendment of subsection (b) (3) of this section] shall be applicable to taxable years beginning after December 31, 1941, and, subject to the provisions of the second sentence of section 169(c) of the Revenue Act of 1942 (added by section 509(a) of the Revenue Act of 1943 and amended by section 2 of this Act [set out as a note under this section]), the amendment [amendment of this section] shall also be applicable to taxable years beginning after December 31, 1923, and before January 1, 1942."

Effective Date of 1945 Amendment. Amendment to first sentence of subsec. (b) (6) by Act Nov. 8, 1945, was made applicable to claims for credit or refund with respect to taxable years beginning after Dec. 31, 1940, by section 122(e) (2) thereof.

Section 5(f) of Act July 31, 1945, provided: "The amendments made by this section [to sections 276 and 322 of I.R.C. 1939] shall be applicable with respect to all taxable years beginning after December 31, 1940, except that the amendment made by subsection (d) [adding subsec. (g) to section 322 of I.R.C.1939] shall not be applicable to any taxable year with respect to which the taxpayer and the Commissioner have entered into a closing agreement under the provisions of section 3760, prior to the date of enactment of this Act [July 31, 1945], in any case in which it is expressly provided in such closing agreement that the tax liability for such taxable year is not to be affected by a net operating loss carry-back or by an unused excess profits credit carry-back."

Effective Date of 1944 Amendment. Amendment of subsecs. (a) (2), (e) by Act May 29, 1944, § 6(b) (9), (10), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Subsec. (e) of Act May 29, 1944, § 14, provided in part: "The amendments made by subsections (a), (c), (d) [to sections 271, 292(a), and 322(d)], shall be applicable with respect to taxable years beginning after December 31, 1942."

Effective Date of 1943 Amendment. Amendment to section by Act June 9, 1943, as effective July 1, 1943, see note under section 476 of I.R.C.1939.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, § 169(c), as amended by Acts Feb. 25, 1944, c. 63, §§ 504, 509(a), 58 Stat. 72; Aug. 18, 1950, § 2, provided that: "The amendment inserting paragraph (5) of section 322(b) shall be applicable to taxable years beginning after Dec. 31, 1937. A provision having the effect of section 322(b) (3), as amended,

of the Internal Revenue Code [this section] and a provision having the effect of the amendment made by subsection (b) of this section, shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1923, but such provisions shall be effective with respect to taxable years beginning prior to January 1, 1942, only if at some time after February 24, 1944, the Commissioner may assess the tax for such taxable year solely by reason of having made (either before, on, or after February 24, 1944) an agreement with the taxpayer pursuant to section 276(b) of the Internal Revenue Code [section 276(b) of I.R.C.1939] or the corresponding provision of the applicable prior revenue law to extend beyond the time prescribed in section 275 of such code or the corresponding provision of such prior revenue law the date within which the Commissioner may assess the tax."

Amendments of subsecs. (a), (e) and (f) by Act Oct. 21, 1942, § 172(e), were made effective Jan. 1, 1943, applicable to all wages (as defined in Part II of Subchapter D) paid on or after such date, by section 172(g) thereof.

Amendment of subsec. (b) by Act Oct. 21, 1942, § 169(b) inserting par. (3), was made applicable to taxable years beginning after Dec. 31, 1938, by section 169(c) thereof.

Amendments of subsecs. (b) (2-5) and (d) by Act Oct. 21, 1942, § 169(a), (b), were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Transferee Agreements. Section 509 (b) of Act Feb. 25, 1944, Title V, c. 63, 58 Stat 74, provided as follows: "If a transferee of a taxpayer and the Commissioner

executed an agreement to extend the time within which the liability with respect to the tax of the taxpayer for a taxable year beginning in 1936 might be assessed against such transferee, any overpayment of the tax of the taxpayer with respect to such taxable year which The Tax Court of the United States finds has been paid by such transferee shall, when the decision of The Tax Court of the United States has become final, be credited or refunded to such transferee. Such credit or refund shall not exceed the amount paid by the transferee with respect to the tax of the taxpayer for such taxable year within the four years immediately preceding the execution of such agreement."

Limitation, War Losses:

Expiration of three-year limitation period with respect to war losses, see note set out under section 127 of I.R.C. 1939.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Acts Aug. 18, 1950, 1950 U.S.Code Cong. Service, p. 3038; May 29, 1944, 1944 U.S. Code Cong.Service, p. 1056.

SUPPLEMENT P.—FOREIGN PERSONAL HOLDING COMPANIES

§ 331. Definition of foreign personal holding company

(a) **General rule.** For the purposes of this chapter the term "foreign personal holding company" means any foreign corporation if—

(1) **Gross income requirement.** At least 60 per centum of its gross income (as defined in section 334(a)) for the taxable year is foreign personal holding company income as defined in section 332; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then, for each subsequent taxable year, the minimum percentage shall be 50 per centum in lieu of 60 per centum, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 per centum of the gross income is foreign personal holding company income. For the purposes of this paragraph there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 334(c) (2); and

(2) **Stock ownership requirement.** At any time during the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group".

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(b) **Exceptions.** The term "foreign personal holding company" does not include a corporation exempt from taxation under section 101. 53 Stat. 92.

§ 332. Foreign personal holding company income

For the purposes of this chapter the term "foreign personal holding company income" means the portion, of the gross income determined for the purposes of section 331(a) (1), which consists of:

(a) **Dividends, interest, royalties, annuities.**

(b) **Stock and securities transactions.** Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) **Commodities transactions.** Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) **Estates and trusts.** Amounts includible in computing the net income of the corporation under Supplement E; and gains from the sale or other disposition of any interest in an estate or trust.

(e) **Personal service contracts.** (1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) **Use of corporation property by shareholder.** Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) **Rents.** Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under subsection (f). 53 Stat. 93.

§ 333. Stock ownership

(a) **Constructive ownership.** For the purpose of determining whether a foreign corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 331(a) (2), section 332(e), or section 332(f)—

(1) **Stock not owned by individual.** Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) **Family and partnership ownership.** An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) **Options.** If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) **Application of family-partnership and option rules.** Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 331(a) (2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) For the purposes of section 332(e) (relating to personal service contracts), or of section 332(f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

(5) **Constructive ownership as actual ownership.** Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) **Option rule in lieu of family and partnership rule.** If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) **Convertible securities.** Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 331(a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) For the purpose of section 332(e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income; and

(3) For the purpose of section 332(f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. 53 Stat. 93.

§ 334. Gross income of foreign personal holding companies

(a) **General rule.** As used in this Supplement with respect to a foreign corporation the term "gross income" means gross income computed (without regard to the provisions of Supplement I) as if the foreign corporation were a domestic corporation.

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(b) **Additions to gross income.** In the case of a foreign personal holding company (whether or not a United States group, as defined in section 331(a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year (whether beginning before, on, or after January 1, 1939) of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Application of subsection (b).** The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed Supplement P net income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 331(a) (1). 53 Stat. 94.

§ 335. Undistributed Supplement P net income

For the purposes of this chapter the term "undistributed Supplement P net income" means the Supplement P net income (as defined in section 336) minus the amount of the basic surtax credit provided in section 27(b) (computed without its reduction, under section 27(b) (1), by the amount of the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations). 53 Stat. 95.

§ 336. Supplement P net income

For the purposes of this chapter the term "Supplement P net income" means the net income with the following adjustments:

(a) **Additional deductions.** There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 500, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the company's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section, and without the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 334 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder). For the purposes of the preceding sentence, payment of any contribution or gift shall be consid-

ered as made within the taxable year if and only if it is considered for the purposes of section 23(q) as made within such year.

(b) Deductions not allowed.

(1) **Taxes and pension trusts.** The deductions provided in section 23 (d), relating to taxes of a shareholder paid by the corporation, and in section 23 (p), relating to pension trusts, shall not be allowed.

(2) **Expenses and depreciation.** The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l) relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(A) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) That the property was held in the course of a business carried on bona fide for profit; and

(C) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(S) **Net loss carry-over disallowed.** The deduction for net operating losses provided in section 23 (s) shall not be allowed.

(c) **1941 capital loss carry-over denied.** The net income shall be computed without regard to section 117 (e) (2).

(d) **Income not placed on annual basis.** The net income shall be computed without regard to section 47 (c). 53 Stat. 95, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 211, 212 (c), 53 Stat. 869; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 135 (b) (2), 150 (h), 56 Stat. 835, 845; Oct. 25, 1949, c. 720, § 3 (b), 63 Stat. 892.

Historical Note

1949 Amendment. Subsec. (a) (2) amended by Act Oct. 25, 1949, which added last sentence to integrate provisions of section relating to charitable contributions with new provisions of subsec. (g) of section 23 of I.R.C.1939.

1942 Amendment. Subsec. (c) amended and subsec. (d) added by Act Oct. 21, 1942.

1939 Amendment. Subsec. (c) added by Act June 29, 1939.

Effective Date of 1949 Amendment. Section 3 (c) of Act Oct. 25, 1949, provided that:

"The amendments made by this section [to sections 23 (q), 102 (d) (1) (B), 336 (a) (2), 505 (a) (2)] shall be applicable with respect to taxable years beginning after December 31, 1942. If the election provided for in such amendments is made for any taxable year beginning before January 1, 1949—

"(1) the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within one year after the date of the enactment of this Act [Oct. 25, 1949]; but

"(2) such election shall not be allowed unless the taxpayer, in accordance with regulations prescribed by the Commissioner with the approval of the Secre-

tary, consents in writing to the assessment (within such period as may be agreed upon) of any deficiency, to the extent resulting from such election, for any other taxable year of the taxpayer, even though on the date of the filing of such consent such assessment is otherwise prevented by the operation of any law or rule of law."

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

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§ 337. Corporation income taxed to United States shareholders

(a) **General rule.** The undistributed Supplement P net income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this chapter includes only income from sources within the United States), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this Supplement.

(b) **Amount included in gross income.** Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 331(a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Credit for obligations of United States and its instrumentalities.** Each United States shareholder shall be allowed a credit against net income, for the purpose of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25(a) (1) or (2) which is included in the gross income of the company otherwise than by the application of the provisions of section 334(b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder). If the foreign personal holding company elects under section 125 to treat the premium on bonds, the interest on which is allowable as a credit under section 25(a) (1) or (2), as amortizable, for the purposes of the preceding sentence each United States shareholder's proportionate share of such interest received by the foreign personal holding company shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 23(v) as is attributable to such share.

(d) **Information in return.** Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed Supplement P net income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 per centum or more in value of the outstanding stock of such company, shall set forth in his return in complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such company.

(e) **Effect on capital account of foreign personal holding company.** An amount which bears the same ratio to the undistributed Supplement P net income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

(f) **Basis of stock in hands of shareholders.** The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

(g) **Basis of stock in case of death.**

For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 113(a) (5).

(h) **Liquidation.**

For amount of gain taken into account on liquidation of foreign personal holding company, see section 115(c).

(i) **Period of limitation on assessment and collection.**

For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275(d).

53 Stat. 96, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 126(g), 56 Stat. 825.

Historical Note

1942 Amendment. Subsec. (c) amended by Act Oct. 21, 1942, which inserted new sentence at end thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections

101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 338. Information returns by officers and directors

(a) **Monthly returns.** On the fifteenth day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs, was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the individuals who on such day are officers and directors of the corporation.

(b) **Annual returns.** On the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner a return setting forth—

(1) In complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net

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income of such foreign personal holding company for such taxable year; and

(2) The same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no information under this paragraph need be set forth in the return filed under this subsection. 53 Stat. 97.

§ 339. Information returns by shareholders

(a) **Monthly returns.** On the fifteenth day of each month each United States shareholder, by or for whom 50 per centum or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 333(a) (2)), if such foreign corporation with respect to its taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the persons who on such day are United States shareholders.

(b) **Annual returns.** On the sixtieth day after the close of the taxable year of a foreign personal holding company each United States shareholder by or for whom on such sixtieth day 50 per centum or more in value of the outstanding stock of such company is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 333(a) (2)), shall file with the Commissioner a return setting forth the same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no return shall be required under this subsection. 53 Stat. 98.

§ 340. Penalties

Any person required under section 338 or 339 to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of the penalties provided in section 145(a) for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. 53 Stat. 98.

SUPPLEMENT Q.—REGULATED INVESTMENT COMPANIES

Historical Note

Title of supplement amended by Act Stat. 878, which substituted "Regulated" Oct. 21, 1942, c. 619, Title I, § 170(a), 56 for "Mutual".

§ 361. Definition

(a) **In general.** For the purposes of this chapter, the term "regulated investment company" means any domestic corporation (whether chartered

or created as an investment trust, or otherwise), other than a personal holding company as defined in section 501, which at all times during the taxable year is registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C., 1940 ed. secs. 80 a-1 to 80 b-2), or that Act, as amended, either as a management company or as a unit investment trust, or which is a common trust fund or similar fund excluded by section 3(c) (3) of such Act from the definition of "investment company" and is not included in the definition of "common trust fund" by section 169.

(b) **Limitations.** Despite the provisions of subsection (a), a corporation shall not be considered a regulated investment company for any taxable year unless—

(1) At least 90 per centum of its gross income is derived from dividends, interest, and gains from the sale or other disposition of stock or securities; and

(2) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than three months; and

(3) At the close of each quarter of the taxable year (A) at least 50 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other regulated investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of the taxpayer and, except and to the extent provided in subsection (c), to not more than 10 per centum of the outstanding voting securities of such issuer, and (B) not more than 25 per centum of the value of its total assets is invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Commissioner with the approval of the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses. For the purposes of clause (B), in ascertaining the value of the taxpayer's investment in the securities of an issuer, there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer, as determined under regulations prescribed by the Commissioner and approved by the Secretary. The term "controls", as used in this paragraph, means the ownership in a corporation of 20 per centum or more of the total combined voting power of all classes of stock entitled to vote. The term "controlled group", as used in this paragraph, means one or more chains of corporations connected through stock ownership with the taxpayer if (i) 20 per centum or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and (ii) the taxpayer owns directly 20 per centum or more of the total combined voting power of all classes of stock entitled to vote, of at least one of the other corporations. The term "value" as used in this paragraph means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the board of directors, except that in the case of securities of majority-owned subsidiaries which are investment companies such fair value shall not exceed market value or asset value, whichever is higher. All other terms used in the preceding provisions of this paragraph shall have the same meaning as when used in the Investment Company Act of 1940, or that Act as amended. A corporation which meets the foregoing requirements of this paragraph at the close of any quarter shall not lose its status as a

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regulated investment company because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A corporation which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a regulated investment company if such discrepancy is eliminated within thirty days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for the purposes of applying the preceding sentence. A corporation which meets such requirements at the close of its first full quarter after the date of the enactment of the Revenue Act of 1942, or eliminates any discrepancy between the value of its investments and such requirements existing at the close of such quarter within thirty days thereafter, shall be deemed to have met such requirements at all previous times; and

(4) It files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year which began after December 31, 1941.

(c) **Certain investment companies.** If the Securities and Exchange Commission determines in accordance with regulations issued by it, and certifies to the Secretary not more than 60 days prior to the close of the taxable year of a registered management investment company, that such investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, such investment company may, in the computation of 50 per centum of the value of its assets under subparagraph (A) of subsection (b) (3) for any quarter of such taxable year, include the value of any securities of an issuer, notwithstanding the fact that such investment company holds more than 10 per centum of the outstanding voting securities of such issuer, but only if the investment company has not continuously held any security of such issuer (or of any predecessor company of such issuer as determined under regulations prescribed by the Secretary) for 10 or more years preceding such quarter of such taxable year. The provisions of this subsection shall not apply at the close of any quarter of a taxable year to an investment company if at the close of such quarter more than 25 per centum of the value of its total assets is represented by securities of issuers with respect to each of which the investment company holds more than 10 per centum of the outstanding voting securities of such issuer and in respect of each of which or any predecessor thereof the investment company has continuously held any security for 10 or more years preceding such quarter unless the value of its total assets so represented is reduced to 25 per centum or less within 30 days after the close of such quarter. The terms used in this subsection shall have the same meaning as in subsection (b) (3) of this section. For the purposes of this subsection, unless the Securities and Exchange Commission determines otherwise, a corporation shall be considered to be principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, for at least 10 years after the date of the first acquisition of any security in such corporation or any predecessor thereof by such investment company if at the date of such acquisition the corporation or its predecessor was principally so engaged, and an investment company shall be considered at any date to be furnishing capital to any company whose securities it holds if within 10 years prior to such date

it has acquired any of such securities, or any securities surrendered in exchange therefor, from such other company or predecessor thereof. For the purposes of the certification hereunder, the Securities and Exchange Commission shall have authority to issue such rules, regulations and orders, and to conduct such investigations and hearings, either public or private, as it may deem appropriate. 53 Stat. 98, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 170(a), 56 Stat. 878; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 337(a), (b), 65 Stat. 509.

Historical Note

References in Text. Investment Company Act of 1940, referred to in subsecs. (a) and (b) (3), is classified to section 80a-1 to 80a-52 of Title 15, Commerce and Trade, and sections 72(a) and 107(f) of Title 11, Bankruptcy.

Section 3(c) (3) of such Act, referred to in subsec. (a), constitutes section 80a-3(c) (3) of Title 15, Commerce and Trade.

Date of enactment of Revenue Act of 1942, referred to in subsec. (b) (3), was Oct. 21, 1942, 4:30 p. m., E.W.T.

1951 Amendment. Subsec. (b) (3) (A) amended by Act Oct. 20, 1951, § 337(b), to insert "except and to the extent provided for in subsection (c)" following "assets of the taxpayer out".

Subsec. (c) added by Act Oct. 20, 1951, § 337(a)

1942 Amendment. Act Oct. 21, 1942, amended this section in its entirety, making it applicable to regulated investment companies instead of mutual investment companies.

Effective Date of 1951 Amendment. Amendment of subsec. (b) (3) (A) and addition of subsec. (c) made applicable only with respect to taxable years beginning after Dec. 31, 1950, by section 337(c) of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Retroactive Provisions. Earnings and profits of a mutual investment company between Dec. 31, 1935, and Jan. 1, 1942, see note under section 362 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States"

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong Service, p. 1781

§ 362. Tax on regulated investment companies

(a) **Earnings and profits.** The earnings and profits of a regulated investment company for any taxable year beginning after December 31, 1941 (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its net income for such taxable year.

(b) **Method of taxation of companies and shareholders.** In the case of a regulated investment company which distributes during the taxable year to its shareholders as taxable dividends other than capital gain dividends an amount not less than 90 per centum of its net income for the taxable year computed without regard to net long-term and net short-term capital gains, and complies for such year with all rules and regulations prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock:

(1) Its Supplement Q net income shall be its adjusted net income (computed by excluding the excess, if any, of the net long-term capital gain over the net short-term capital loss, and without the net operating loss deduction provided in section 23(s)) minus the basic surtax credit (excluding capital gain dividends) computed under section 27(b) without the application of paragraphs (2) and (3). For the purposes of this paragraph, the net income shall be computed without regard to section 47(c).

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(2) Its Supplement Q surtax net income shall be its net income (computed by excluding the excess, if any, of the net long-term capital gain over the net short-term capital loss, and without the net operating loss deduction provided in section 23(s)) minus the dividends (other than capital gain dividends) paid during the taxable year increased by the consent dividends credit provided by section 28. For the purposes of this paragraph and paragraph (5) the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27. For the purposes of this paragraph the net income shall be computed without regard to section 47(c).

(3) In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 28% per centum of the amount thereof. In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 30 per centum of the amount thereof. In the case of taxable years beginning after March 31, 1954, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 25 per centum of the amount thereof.

(4) In the case of taxable years beginning after December 31, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q surtax net income a tax equal to 22 per centum of the amount thereof in excess of \$25,000.

(5) There shall be levied, collected, and paid for each taxable year a tax of 25 per centum of the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the amount of capital gain dividends paid during the year.

(6) A capital gain dividend shall be treated by the shareholders as gains from the sale or exchange of capital assets held for more than 6 months.

(7) A capital gain dividend means any dividend or part thereof which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders at any time prior to the expiration of thirty days after close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(8) For the purposes of this subsection, any dividend or portion thereof declared by a company after the close of the taxable year and prior to the time prescribed by law for the filing of its return for the taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the company so elects in such return, be treated as having been paid during such taxable year, but only if distribution of such dividend is actually made to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration. 53 Stat. 99, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 209, 211(h), 53 Stat. 866, 869; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title I, § 3(d), 54 Stat. 518; Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title I, § 101(c), 54 Stat. 974; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 103(e), 55 Stat. 693; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 170(a), 56 Stat. 878; Nov. 8, 1945, 5:17 p. m.,

E. S. T., c. 453, Title I, § 121(c), 59 Stat. 568; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. II, § 121(e) (1), (2), Title II, § 222, 64 Stat. 918, 947; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 201(c), 64 Stat. 1216; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 121(d), 65 Stat. 468.

Historical Note

1951 Amendment. Subsec. (b) (3), amended by Act Oct. 20, 1951, § 121(d), to increase the surtax rates.

Subsec. (b) (4) amended by Acts Oct. 20, 1951, § 121(d) and Jan. 3, 1951, § 201(c). Act Oct. 20, 1951, increased the surtax rates. Act Jan. 3, 1951 increased the surtax rate from 20 to 22 per centum.

1950 Amendment. Subsec. (b) (3) amended by Act Sept. 23, 1950, § 121(e) (1), to reflect the new normal tax rates.

Subsec. (b) (4) amended by Act Sept. 23, 1950, § 121 (e) (2), to reflect the new surtax rates.

Subsec. (b) (8) added by Act Sept. 23, 1950, § 222.

1945 Amendment. Subsec. (b) (4) amended by Act Nov. 8, 1945, which struck out "16 per centum" and inserted in lieu thereof "14 per centum".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety making it applicable to regulated investment companies instead of mutual investment companies.

1941 Amendment. Subsec. (b) amended by Act Sept. 20, 1941, which increased the tax from "22 $\frac{1}{10}$ per centum" to "24 per centum."

1940 Amendments. Subsec. (b) amended by Acts Oct. 8, 1940, and June 25, 1940, which increased tax from "18 per centum" to "22 $\frac{1}{10}$ per centum."

1939 Amendment. Subsec. (a) amended by Act June 29, 1939, § 211(h).

Subsec. (b) amended by Act June 29, 1939, § 209.

Effective Date of 1951 Amendments. Amendment as applicable to taxable years beginning after Dec. 31, 1950 and ending after Mar. 31, 1951, see note set out under section 13 of I.R.C. 1939.

Amendment of subsec. (b) (4) as applicable with respect to taxable years beginning on or after July 1, 1950, see note set out under section 15 of I.R.C. 1939.

Effective Date of 1950 Amendments. Section 121(e) (3) of Act Sept. 23, 1950, provided that the amendment of subsecs. (b) (3) and (4) by said Act Sept. 23, 1950, should be applicable only with respect to taxable years beginning after Dec. 31, 1949.

Section 222 of Act Sept. 23, 1950, provided in part that the amendment of subsec. (b) should be effective with respect to taxable years ending after Sept. 23, 1950.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, was made applicable with respect to taxable years beginning after Dec. 31, 1945, by section 121(d) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Effective Date of 1940 Amendments. Section 101(e) of Act Oct. 8, 1940 provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Act June 25, 1940, provided as follows: "The amendments made by this title [sections 1-9 of 1940 Act], except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939," by section 9 of said Act.

Effective Date of 1939 Amendment. Section 229 of Act June 29, 1939 provided that the amendment of subsec. (b) was made applicable only with respect to taxable years beginning after Dec. 31, 1939.

Retrospective Provisions Relating to Earnings and Profits. Section 170(c) of Act Oct. 21, 1942 provided as follows:

"(c) For any taxable year beginning after December 31, 1935, and before January 1, 1942, of a corporation which filed an income tax return as a mutual investment company, the earnings and profits of such corporation for such taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its net income for such taxable year; except that this subsection shall not result in earnings and profits of the taxable years in excess of the aggregate of the distributions made by the corporation to its shareholders during the taxable year exclusive of the amounts, if any, which the corporation advised its shareholders to be nontaxable for Federal income tax purposes."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its appli-

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cation would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 904, Title II, § 214, 64 Stat. 937.

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

1940—June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Jan. 3, 1951, see 1950 U.S. Code Cong Service, p. 4027. See, also, Act Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814.

§ 363. Omitted. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 170(a), 56 Stat. 878.

Historical Note

Codification. Section, relating to surtax on mutual investment companies, was added to Supplement Q of this chapter by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 104(b), 55 Stat. 693. It was omitted from Supplement Q by the amendment thereof in its entirety by Act Oct. 21, 1942, 4:30 p. m., E.W.T., ch. 619, Title I, § 170(a), 56 Stat. 878.

Effective Date. The omission of this section by Act Oct. 21, 1942, was made

applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

SUPPLEMENT R.—EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF SECURITIES AND EXCHANGE COMMISSION

§ 371. Nonrecognition of gain or loss

(a) **Exchanges of stock or securities only.** No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

(b) **Exchanges and sales of property by corporations.** No gain shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission transfers property in exchange for property, and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If any such property so received is nonexempt property, gain shall be recognized unless such nonexempt property or an amount equal to the fair market value of such property at the time of the transfer is, within 24 months of the transfer, under regulations prescribed by the Commissioner with the approval of the Secretary, and in accordance with an order of the Securities and Exchange Commission, expended for property other than nonexempt property or is invested as a contribution to the capital, or as paid-in surplus, of another corporation, and such order recites that such expenditure or investment by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If the fair market value of such nonexempt property at the time of the transfer exceeds the amount expended

and the amount invested, as required in the second sentence of this paragraph, the gain, if any, to the extent of such excess, shall be recognized. Any gain, to the extent that it cannot be applied in reduction of basis under section 372(a) (2) shall be recognized. For the purposes of this subsection, a distribution in cancellation or redemption (except a distribution having the effect of a dividend) of the whole or a part of the transferor's own stock (not acquired on the transfer) and a payment in complete or partial retirement or cancellation of securities representing indebtedness of the transferor or a complete or partial retirement or cancellation of such securities which is a part of the consideration for the transfer, shall be considered an expenditure for property other than nonexempt property, and if, on the transfer, a liability of the transferor is assumed, or property of the transferor is transferred subject to a liability, the amount of such liability shall be considered to be an expenditure by the transferor for property other than nonexempt property. This subsection shall not apply unless the transferor corporation consents, at such time and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe, to the regulations prescribed under section 372(a) (2) in effect at the time of filing its return for the taxable year in which the transfer occurs.

(c) **Distribution of stock or securities only.** If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) **Transfers within system group.** (1) No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or (B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) If the property received upon an exchange which is within any of the provisions of paragraph (1) of this subsection consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds

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which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) **Exchanges not solely in kind.** (1) If an exchange (not within any of the provisions of subsection (d)) would be within the provisions of subsection (a) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) If an exchange is within the provisions of paragraph (1) of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under such paragraph (1) shall be taxed as a gain from the exchange of property.

(f) **Application of section.** The provisions of this section shall not apply to an exchange, expenditure, investment, distribution, or sale unless (1) the order of the Securities and Exchange Commission in obedience to which such exchange, expenditure, investment, distribution, or sale was made recites that such exchange, expenditure, investment, distribution, or sale is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U.S.C., title 15, sec. 79k (b)), (2) such order specifies and itemizes the stock and securities and other property which are ordered to be acquired, transferred, received, or sold upon such exchange, acquisition, expenditure, distribution, or sale, and, in the case of an investment, the investment to be made, and (3) such exchange, acquisition, expenditure, investment, distribution or sale was made in obedience to such order, and was completed within the time prescribed therefor.

(g) **Non-application of other provisions.** If an exchange or distribution made in obedience to an order of the Securities and Exchange Commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 112 (other than the provisions of paragraph (8) of subsection (b)), then the provisions of this section only shall apply. 53 Stat. 99, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 171(a, b, g), 56 Stat. 881, 882, 883.

Historical Note

1942 Amendment. Subsecs. (b), (e) and (f) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Transfer of Functions. All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175,

64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 372. Basis for determining gain or loss**(a) Exchanges generally**

(1) Exchanges subject to the provisions of section 371(a). If the property was acquired upon an exchange subject to the provisions of section 371(a) or (e) the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 371(a) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(2) Exchanges subject to the provisions of section 371(b). The gain not recognized upon a transfer by reason of section 371(b) shall be applied to reduce the basis for determining gain or loss on sale or exchange of the following categories of property in the hands of the transferor immediately after the transfer, and property acquired within 24 months after such transfer by an expenditure or investment to which section 371(b) relates on account of the acquisition of which gain is not recognized under such subsection, in the following order:

(1) Property of a character subject to the allowance for depreciation under section 23(l);

(2) Property (not described in paragraph (1)) with respect to which a deduction for amortization is allowable under section 23(t);

(3) Property with respect to which a deduction for depletion is allowable under section 23(m) but not allowable under section 114(b) (2), (3), or (4);

(4) Stock and securities of corporations not members of the system group of which the transferor is a member (other than stock or securities of a corporation of which the transferor is a subsidiary);

(5) Securities (other than stock) of corporations which are members of the system group of which the transferor is a member (other than securities of the transferor or of a corporation of which the transferor is a subsidiary);

(6) Stock of corporations which are members of the system group of which the transferor is a member (other than stock of the transferor or of a corporation of which the transferor is a subsidiary);

(7) All other remaining property of the transferor (other than stock or securities of the transferor or of a corporation of which the transferor is a subsidiary).

The manner and amount of the reduction to be applied to particular property within any of the categories described in paragraphs (1) to (7), inclusive, shall be determined under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Transfers to corporations. If, in connection with a transfer subject to the provisions of section 371(a), (b), or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money

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in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) **Distributions of stock or securities.** If the stock or securities were received in a distribution subject to the provisions of section 371(c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed.

(d) **Transfers within system group.** If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 371(d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) the same as in the case of the property transferred therefor, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower. 53 Stat. 101, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 171(c), 56 Stat. 882.

Historical Note

1942 Amendment. Subsec. (a) (1) amended and subsec. (a) (2) added by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections

101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 373. Definitions

As used in this supplement—

(a) The term "order of the Securities and Exchange Commission" means an order issued after May 28, 1938, by the Securities and Exchange Commission which requires, authorizes, permits, or approves transactions described in such order to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U. S. C., title 15, sec. 79k(b)), which has become or becomes final in accordance with law.

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935, 49 Stat. 804 (U.S.C., Supp. III, Title 15, § 79(b), (c)).

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per centum of the total combined voting power of all classes of stock of such corporation entitled to vote (not

including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if —

(1) At least 90 per centum of each class of the stock (other than (A) stock which is preferred as to both dividends and assets, and (B) stock which is limited and preferred as to dividends but which is not preferred as to assets but only if the total value of such stock is less than 1 per centum of the aggregate value of all classes of stock which are not preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means—

(1) Any consideration in the form of evidences of indebtedness owed by the transferor or a cancellation or assumption of debts or other liabilities of the transferor (including a continuance of encumbrances subject to which the property was transferred);

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding twenty-four months, exclusive of days of grace;

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) Stock or securities which were acquired from a registered holding company or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (1), (2), or (3)) were acquired in obedience to an order of the Securities and Exchange Commission or were acquired with the authorization or approval of the Securities and Exchange Commission under any section of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U. S. C., title 15, sec. 79k (b));

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in paragraph (2) or (3).

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing). 53 Stat. 102, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 221, 53 Stat. 878; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 117(a), 55 Stat. 698; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 171 (d-f), 56 Stat. 883; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 338(a), 65 Stat. 510.

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Historical Note

References in Text. Public Utility Holding Company Act of 1935, referred to in subsec. (e) (4), is classified to section 79 et seq. of Title 15, Commerce and Trade.

1951 Amendment. Subsec. (d) (1) amended by Act Oct. 20, 1951, to substitute "(other than * * * dividends and assets)" in lieu of "(other than stock which is preferred as to both dividends and assets)".

1942 Amendment. Subsecs. (a) and (e) (1, 4) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941.

1939 Amendment. Subsec. (a) amended by Act June 29, 1939.

Effective Date of 1951 Amendment. Amendment of subsec. (d) (1) made applicable with respect to taxable years affected by an exchange or distribution made after Dec. 31, 1947, by section 333 (b) of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1939, by section 117 (b) thereof.

Effective Date of 1939 Amendment. Section 221(b) of Act June 29, 1939 pro-

vided that the amendment of subsec. (a) was made applicable to taxable years beginning after Dec. 31, 1938.

Transfer of Functions. All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1285, set out in note under section 78d of Title 15, Commerce and Trade.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 11:45 a. m., E.S.T., c. 419, Title I, § 8, 54 Stat. 520.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

SUPPLEMENT S.—TAX OF SHAREHOLDERS OF PERSONAL SERVICE CORPORATIONS

Historical Note

Supplement S added to Internal Revenue Code by Act Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005.

§ 391. Applicability of Supplement

If a personal service corporation (as defined in section 449) is exempt under such section for any taxable year from the excess profits tax imposed by such subchapter, the provisions of this Supplement shall be applicable with respect to each shareholder of such corporation who was a shareholder in such corporation on the last day of such taxable year of the corporation. Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005, amended Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304(f), 64 Stat. 1220.

Historical Note

1951 Amendment. Act Jan. 3, 1951, amended section by substituting "449" for "725".

Effective Date of 1951 Amendment. Amendment of section by Act Jan. 3, 1951, as applicable with respect to taxable years ending after June 30, 1950, see note set out under section 114 of I.R.C. 1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Jan. 3, 1951, see 1950 U.S. Code Cong. Service, p. 4027.

§ 392. Undistributed Supplement S net income

For the purposes of this chapter, the term "undistributed Supplement S net income" means the Supplement S net income (as defined in section 393) minus the amount of the dividends paid during the taxable year. For the purposes of this section the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27. Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005.

§ 393. Supplement S net income

For the purposes of this chapter "Supplement S net income" means the net income, except that there shall be allowed as additional deductions

(a) The Federal income tax payable under this chapter for the taxable years; and

(b) In lieu of the deduction allowed by section 23(q), contributions or gifts, payment of which is made within the taxable year, to or for the use of donees described in section 23(q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the corporation's net income, computed without the benefit of this subsection and section 23(q).

For the purposes of this section, the net income shall be computed without regard to section 47(c). Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 135(b) (3), 56 Stat. 835.

Historical Note

1942 Amendment. Act Oct. 21, 1942, amended section by adding last par.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections

101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 394. Corporation income taxed to shareholders

(a) General rule. The undistributed Supplement S net income of a personal service corporation shall be included in the gross income of the shareholders in the manner and to the extent set forth in this Supplement.

(b) Amount included in gross income. Each shareholder who, on the last day of the taxable year of the corporation, was a shareholder in such corporation shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend if on such last day there had been distributed by the corporation, and received by the shareholders, an amount equal to the undistributed Supplement S net income of the corporation for its taxable year.

(c) Credit for obligations of the United States and its instrumentalities. Each such shareholder shall be allowed a credit against net income, for the purposes of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25(a) (1) or (2) which is included in the gross income of the corporation. For any taxable year of the corporation beginning after December 31, 1941, each such shareholder's proportionate share of such interest received by the corporation shall be his proportionate share of such interest (deter-

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mined without regard to this sentence) reduced by so much of the deduction under section 23(v) as is attributable to such share.

(d) **Effect on capital account of personal service corporation.** An amount equal to the undistributed Supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

(e) **Basis of stock in hands of shareholders.** The amount required to be included in the gross income of the shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

(f) **Period of limitation on assessment and collection.** For period of limitation on assessment and collection without assessment, in the case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275(d). Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 126(h), 56 Stat. 825.

Historical Note

1942 Amendment. Subsec (c) amended by Act Oct. 21, 1942, which inserted new sentence at end thereof.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of section applicable to taxable years beginning after Dec. 31, 1941.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections

101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 395. Nonresident alien individuals and foreign corporations

In the case of a shareholder taxable under section 211(a) or 231(a), his distributive share of the undistributed Supplement S net income of the corporation required to be included in the gross income shall be considered as a dividend received by him from sources within the United States. Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005.

§ 396. Shareholder's tax paid by corporation

If a personal service corporation is exempt for any taxable year under section 449 from excess profits tax, it shall, at the time of filing its return, pay to the collector an amount equal to the amount that would be required by section 143 (b) or section 144 to be deducted and withheld by the corporation if any amount required by this Supplement to be included in the gross income of the shareholder had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. Such amount shall be collected and paid in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 502, 54 Stat. 1005, amended Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304 (f), 64 Stat. 1220.

Historical Note

1951 Amendment. Act Jan. 3, 1951, amended section by substituting "449" for "725".

Effective Date of 1951 Amendment. Amendment of section by Act Jan. 3, 1951, as applicable with respect to taxable years ending after June 30, 1950, see note set out under section 114 of I.R.C. 1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Jan. 3, 1951, see 1950 U.S.Code Cong.Service, p. 4259.

**SUPPLEMENT T.—INDIVIDUALS WITH ADJUSTED GROSS INCOME
OF LESS THAN \$5,000****Historical Note**

1944 Amendment. Act May 29, 1944, 7 p. m., E.W.T., c. 210, Part II, § 5(a), 58 Stat. 232, applicable to taxable years beginning after Dec. 31, 1943, amended "Supplement T" by striking "—Individuals with Gross Income From Certain Sources Of \$3000 Or Less" and inserting in lieu thereof "Individuals with Adjusted Gross Income of Less than \$5000".

1941 Amendment. Supplement T added to Internal Revenue Code by Act Sept 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 102(a), 55 Stat. 689 and was made applicable to taxable years beginning after Dec. 31, 1940.

§ 400. Imposition of tax

In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than \$5,000, and who has elected to pay the tax imposed by this supplement for such year, a tax as follows:

\$ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE I

**Taxable year beginning January 1, 1951, and ending
December 31, 1951**

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$0	\$675	\$0	\$0	\$0	\$0
675	700	4	0	0	0
700	725	8	0	0	0
725	750	13	0	0	0
750	775	18	0	0	0
775	800	22	0	0	0
800	825	27	0	0	0
825	850	31	0	0	0
850	875	36	0	0	0
875	900	41	0	0	0
900	925	45	0	0	0
925	950	50	0	0	0
950	975	54	0	0	0
975	1,000	59	0	0	0
1,000	1,025	63	0	0	0
1,025	1,050	68	0	0	0
1,050	1,075	73	0	0	0
1,075	1,100	77	0	0	0
1,100	1,125	82	0	0	0
1,125	1,150	86	0	0	0
1,150	1,175	91	0	0	0
1,175	1,200	96	0	0	0
1,200	1,225	100	0	0	0
1,225	1,250	105	0	0	0
1,250	1,275	109	0	0	0
1,275	1,300	114	0	0	0
1,300	1,325	119	0	0	0
1,325	1,350	123	1	0	0
1,350	1,375	128	5	0	0
1,375	1,400	132	10	0	0
1,400	1,425	137	15	0	0
1,425	1,450	142	19	0	0
1,450	1,475	146	24	0	0
1,475	1,500	151	28	0	0
1,500	1,525	155	33	0	0
1,525	1,550	160	37	0	0
1,550	1,575	164	42	0	0
1,575	1,600	169	47	0	0

TABLE I—Continued

Taxable year beginning January 1, 1951, and ending
December 31, 1951

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$1,600	\$1,625	\$174	\$51	\$0	\$0
1,625	1,650	178	56	0	0
1,650	1,675	183	60	0	0
1,675	1,700	187	65	0	0
1,700	1,725	192	70	0	0
1,725	1,750	197	74	0	0
1,750	1,775	201	79	0	0
1,775	1,800	206	83	0	0
1,800	1,825	210	88	0	0
1,825	1,850	215	93	0	0
1,850	1,875	220	97	0	0
1,875	1,900	224	102	0	0
1,900	1,925	229	106	0	0
1,925	1,950	233	111	0	0
1,950	1,975	238	116	0	0
1,975	2,000	243	120	0	0
2,000	2,025	247	125	2	0
2,025	2,050	252	129	7	0
2,050	2,075	256	134	11	0
2,075	2,100	261	138	16	0
2,100	2,125	265	143	21	0
2,125	2,150	270	148	25	0
2,150	2,175	275	152	30	0
2,175	2,200	279	157	34	0
2,200	2,225	284	161	39	0
2,225	2,250	288	166	44	0
2,250	2,275	293	171	48	0
2,275	2,300	298	175	53	0
2,300	2,325	302	180	57	0

§ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE I—Continued
Taxable year beginning January 1, 1951, and ending
December 31, 1951

•If adjusted gross income is—		And the number of exemptions is—									
At least	But less than	1	2		3		4	5	6	7	8 or more
			And taxpayer is single or married filing separately	And a joint return is filed	And taxpayer is single or married filing separately	And a joint return is filed					
			The tax shall be—								
\$2,325	\$2,350	\$307	\$184	\$184	\$62	\$62	\$0	\$0	\$0	\$0	\$0
2,350	2,375	311	189	189	67	67	0	0	0	0	0
2,375	2,400	316	194	194	71	71	0	0	0	0	0
2,400	2,425	321	198	198	76	76	0	0	0	0	0
2,425	2,450	325	203	203	80	80	0	0	0	0	0
2,450	2,475	330	207	207	85	85	0	0	0	0	0
2,475	2,500	334	212	212	90	90	0	0	0	0	0
2,500	2,525	339	216	216	94	94	0	0	0	0	0
2,525	2,550	343	221	221	99	99	0	0	0	0	0
2,550	2,575	348	226	226	103	103	0	0	0	0	0
2,575	2,600	353	230	230	108	108	0	0	0	0	0
2,600	2,625	357	235	235	112	112	0	0	0	0	0
2,625	2,650	362	239	239	117	117	0	0	0	0	0
2,650	2,675	366	244	244	122	122	0	0	0	0	0
2,675	2,700	371	249	249	126	126	4	0	0	0	0
2,700	2,725	376	253	253	131	131	8	0	0	0	0
2,725	2,750	380	258	258	135	135	13	0	0	0	0
2,750	2,775	385	262	262	140	140	18	0	0	0	0
2,775	2,800	389	267	267	145	145	22	0	0	0	0
2,800	2,825	394	272	272	149	149	27	0	0	0	0
2,825	2,850	399	276	276	154	154	31	0	0	0	0
2,850	2,875	403	281	281	158	158	36	0	0	0	0
2,875	2,900	408	285	285	163	163	41	0	0	0	0
2,900	2,925	413	290	290	168	168	45	0	0	0	0
2,925	2,950	418	295	295	172	172	50	0	0	0	0
2,950	2,975	423	299	299	177	177	54	0	0	0	0
2,975	3,000	428	304	304	181	181	59	0	0	0	0
3,000	3,050	435	311	311	188	188	66	0	0	0	0
3,050	3,100	446	320	320	197	197	75	0	0	0	0
3,100	3,150	456	329	329	207	207	84	0	0	0	0
3,150	3,200	466	338	338	216	216	93	0	0	0	0

TABLE I—Continued
Taxable year beginning January 1, 1951, and ending
December 31, 1951

If adjusted gross income is—		And the number of exemptions is—									
At least	But less than	1	2		3		4	5	6	7	8 or more
			And tax-payer is single or married filing separately	And a joint re-turn is filed	And tax-payer is single or married filing separately	And a joint re-turn is filed					
			The tax shall be—								
\$3,200	\$3,250	\$476	\$347	\$347	\$225	\$225	\$108	\$0	\$0	\$0	\$0
3,250	3,300	483	356	356	234	234	112	0	0	0	0
3,300	3,350	496	366	366	243	243	121	0	0	0	0
3,350	3,400	506	375	375	252	252	130	8	0	0	0
3,400	3,450	516	384	384	262	262	139	17	0	0	0
3,450	3,500	526	393	393	271	271	148	26	0	0	0
3,500	3,550	536	402	402	280	280	158	35	0	0	0
3,550	3,600	546	412	412	289	289	167	44	0	0	0
3,600	3,650	556	422	421	298	298	176	54	0	0	0
3,650	3,700	566	432	430	308	308	185	63	0	0	0
3,700	3,750	577	442	439	317	317	194	72	0	0	0
3,750	3,800	587	452	448	326	326	203	81	0	0	0
3,800	3,850	597	462	457	335	335	213	90	0	0	0
3,850	3,900	607	472	467	344	344	222	99	0	0	0
3,900	3,950	617	482	476	353	353	231	109	0	0	0
3,950	4,000	627	493	485	363	363	240	118	0	0	0
4,000	4,050	637	503	494	372	372	249	127	5	0	0
4,050	4,100	647	513	503	381	381	259	136	14	0	0
4,100	4,150	657	523	513	390	390	268	145	23	0	0
4,150	4,200	667	533	522	399	399	277	155	32	0	0
4,200	4,250	677	543	531	409	409	286	164	41	0	0
4,250	4,300	687	553	540	419	418	295	173	50	0	0
4,300	4,350	698	563	549	429	427	304	182	60	0	0
4,350	4,400	708	573	558	439	436	314	191	69	0	0
4,400	4,450	718	583	568	449	445	323	200	78	0	0
4,450	4,500	728	593	577	459	454	332	210	87	0	0
4,500	4,550	738	603	586	469	464	341	219	96	0	0
4,550	4,600	748	614	595	479	473	350	228	106	0	0
4,600	4,650	758	624	604	489	482	360	237	115	0	0
4,650	4,700	768	634	614	499	491	369	246	124	2	0
4,700	4,750	778	644	623	508	500	378	256	133	11	0
4,750	4,800	788	654	632	519	509	387	265	142	20	0
4,800	4,850	798	664	641	530	519	396	274	151	29	0
4,850	4,900	808	674	650	540	528	405	283	161	38	0
4,900	4,950	818	684	659	550	537	415	292	170	47	0
4,950	5,000	829	694	669	560	546	424	301	179	57	0

§ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE II

**Taxable years beginning after October 31, 1951,
and before January 1, 1954**

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$0	\$675	\$0	\$0	\$0	\$0
675	700	4	0	0	0
700	725	9	0	0	0
725	750	14	0	0	0
750	775	19	0	0	0
775	800	24	0	0	0
800	825	29	0	0	0
825	850	34	0	0	0
850	875	39	0	0	0
875	900	44	0	0	0
900	925	49	0	0	0
925	950	54	0	0	0
950	975	59	0	0	0
975	1,000	64	0	0	0
1,000	1,025	69	0	0	0
1,025	1,050	74	0	0	0
1,050	1,075	79	0	0	0
1,075	1,100	84	0	0	0
1,100	1,125	89	0	0	0
1,125	1,150	94	0	0	0
1,150	1,175	99	0	0	0
1,175	1,200	104	0	0	0
1,200	1,225	109	0	0	0
1,225	1,250	114	0	0	0
1,250	1,275	119	0	0	0
1,275	1,300	124	0	0	0
1,300	1,325	129	0	0	0
1,325	1,350	134	1	0	0
1,350	1,375	139	6	0	0
1,375	1,400	144	11	0	0
1,400	1,425	149	16	0	0
1,425	1,450	154	21	0	0
1,450	1,475	159	26	0	0
1,475	1,500	164	31	0	0

TABLE II — Continued

Taxable years beginning after October 31, 1951,
and before January 1, 1954

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$1,500	\$1,525	\$169	\$36	\$0	\$0
1,525	1,550	174	41	0	0
1,550	1,575	179	46	0	0
1,575	1,600	184	51	0	0
1,600	1,625	189	56	0	0
1,625	1,650	194	61	0	0
1,650	1,675	199	66	0	0
1,675	1,700	204	71	0	0
1,700	1,725	209	76	0	0
1,725	1,750	214	81	0	0
1,750	1,775	219	86	0	0
1,775	1,800	224	91	0	0
1,800	1,825	229	96	0	0
1,825	1,850	234	101	0	0
1,850	1,875	239	106	0	0
1,875	1,900	244	111	0	0
1,900	1,925	249	116	0	0
1,925	1,950	254	121	0	0
1,950	1,975	259	126	0	0
1,975	2,000	264	131	0	0
2,000	2,025	269	136	2	0
2,025	2,050	274	141	7	0
2,050	2,075	279	146	12	0
2,075	2,100	284	151	17	0
2,100	2,125	289	156	22	0
2,125	2,150	294	161	27	0
2,150	2,175	299	166	32	0
2,175	2,200	304	171	37	0
2,200	2,225	309	176	42	0
2,225	2,250	314	181	47	0
2,250	2,275	319	186	52	0
2,275	2,300	324	191	57	0
2,300	2,325	329	196	62	0

\$ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE II — Continued
Taxable years beginning after October 31, 1951,
and before January 1, 1954

If adjusted gross income is—		And the number of exemptions is—												
At least	But less than	1		2			3			4	5	6	7	8 or more
		And tax-payer is single or married filing separately	And tax-payer is head of household	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed					
		The tax shall be—												
\$2,325	\$2,350	\$334	\$334	\$201	\$201	\$201	\$87	\$87	\$87	\$0	\$0	\$0	\$0	\$0
2,350	2,375	339	339	206	206	206	72	72	72	0	0	0	0	0
2,375	2,400	344	344	211	211	211	77	77	77	0	0	0	0	0
2,400	2,425	349	349	216	216	216	82	82	82	0	0	0	0	0
2,425	2,450	354	354	221	221	221	87	87	87	0	0	0	0	0
2,450	2,475	359	359	226	226	226	92	92	92	0	0	0	0	0
2,475	2,500	364	364	231	231	231	97	97	97	0	0	0	0	0
2,500	2,525	369	369	236	236	236	102	102	102	0	0	0	0	0
2,525	2,550	374	374	241	241	241	107	107	107	0	0	0	0	0
2,550	2,575	379	379	246	246	246	112	112	112	0	0	0	0	0
2,575	2,600	384	384	251	251	251	117	117	117	0	0	0	0	0
2,600	2,625	389	389	256	256	256	122	122	122	0	0	0	0	0
2,625	2,650	394	394	261	261	261	127	127	127	0	0	0	0	0
2,650	2,675	399	399	266	266	266	132	132	132	0	0	0	0	0
2,675	2,700	404	404	271	271	271	137	137	137	4	0	0	0	0
2,700	2,725	409	409	276	276	276	142	142	142	9	0	0	0	0
2,725	2,750	414	414	281	281	281	147	147	147	14	0	0	0	0
2,750	2,775	419	419	286	286	286	152	152	152	19	0	0	0	0
2,775	2,800	424	424	291	291	291	157	157	157	24	0	0	0	0
2,800	2,825	429	429	296	296	296	162	162	162	29	0	0	0	0
2,825	2,850	434	434	301	301	301	167	167	167	34	0	0	0	0
2,850	2,875	439	439	306	306	306	172	172	172	39	0	0	0	0
2,875	2,900	444	444	311	311	311	177	177	177	44	0	0	0	0
2,900	2,925	449	449	316	316	316	182	182	182	49	0	0	0	0
2,925	2,950	455	454	321	321	321	187	187	187	54	0	0	0	0
2,950	2,975	460	459	326	326	326	192	192	192	59	0	0	0	0
2,975	3,000	466	465	331	331	331	197	197	197	64	0	0	0	0
3,000	3,050	474	473	338	338	338	205	205	205	72	0	0	0	0
3,050	3,100	485	483	348	348	348	215	215	215	82	0	0	0	0
3,100	3,150	496	494	358	358	358	225	225	225	92	0	0	0	0
3,150	3,200	507	504	368	368	368	235	235	235	102	0	0	0	0
3,200	3,250	518	515	378	378	378	245	245	245	112	0	0	0	0
3,250	3,300	529	525	388	388	388	255	255	255	122	0	0	0	0
3,300	3,350	541	536	398	398	398	265	265	265	132	0	0	0	0
3,350	3,400	552	546	408	408	408	275	275	275	142	8	0	0	0

TABLE II—Continued

Taxable years beginning after October 31, 1951,
and before January 1, 1954

If adjusted gross income is—		And the number of exemptions is—												
At least	But less than	1		2			3			4	5	6	7	8 or more
		And tax-payer is single or married filing separately	And tax-payer is head of household	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed					
The tax shall be—														
3,400	3,450	503	557	418	418	418	285	285	285	152	18	0	0	0
3,450	3,500	574	567	428	428	428	295	295	295	162	28	0	0	0
3,500	3,550	585	578	438	438	438	305	305	305	171	38	0	0	0
3,550	3,600	596	588	448	448	448	315	315	315	181	48	0	0	0
3,600	3,650	607	599	459	459	458	325	325	325	191	58	0	0	0
3,650	3,700	618	610	470	469	468	335	335	335	201	68	0	0	0
3,700	3,750	629	620	482	480	478	345	345	345	211	78	0	0	0
3,750	3,800	640	631	493	490	488	355	355	355	221	88	0	0	0
3,800	3,850	651	641	504	501	498	365	365	365	231	98	0	0	0
3,850	3,900	662	652	515	511	508	375	375	375	241	108	0	0	0
3,900	3,950	673	662	526	522	518	385	385	385	251	118	0	0	0
3,950	4,000	684	673	537	532	528	395	395	395	261	128	0	0	0
4,000	4,050	696	683	548	543	538	405	405	405	271	138	5	0	0
4,050	4,100	707	694	559	553	548	415	415	415	281	148	15	0	0
4,100	4,150	718	704	570	564	558	425	425	425	291	158	25	0	0
4,150	4,200	729	715	581	574	568	435	435	435	301	168	35	0	0
4,200	4,250	740	725	592	585	578	445	445	445	311	178	45	0	0
4,250	4,300	751	736	603	596	598	456	455	455	321	188	55	0	0
4,300	4,350	762	746	614	606	598	467	466	465	331	198	65	0	0
4,350	4,400	773	757	625	617	608	478	476	475	341	208	75	0	0
4,400	4,450	784	768	636	627	618	489	487	485	351	218	85	0	0
4,450	4,500	795	778	648	638	628	500	497	495	361	228	95	0	0
4,500	4,550	806	789	659	648	638	511	508	504	371	238	105	0	0
4,550	4,600	817	799	670	659	648	522	518	514	381	248	115	0	0
4,600	4,650	828	810	681	669	658	533	529	524	391	258	125	0	0
4,650	4,700	839	820	692	680	668	544	539	534	401	268	135	2	0
4,700	4,750	851	831	703	690	678	555	550	544	411	278	145	12	0
4,750	4,800	862	841	714	701	688	566	560	554	421	288	155	22	0
4,800	4,850	873	852	725	711	698	577	571	564	431	298	165	32	0
4,850	4,900	884	862	736	722	708	589	581	574	441	308	175	42	0
4,900	4,950	895	873	747	732	718	600	592	584	451	318	185	52	0
4,950	5,000	906	883	758	743	728	611	603	594	461	328	195	62	0

§ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE III

Taxable years beginning after December 31, 1953

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$0	\$675	\$0	\$0	\$0	\$0
675	700	4	0	0	0
700	725	8	0	0	0
725	750	13	0	0	0
750	775	17	0	0	0
775	800	22	0	0	0
800	825	26	0	0	0
825	850	31	0	0	0
850	875	35	0	0	0
875	900	40	0	0	0
900	925	44	0	0	0
925	950	49	0	0	0
950	975	53	0	0	0
975	1,000	58	0	0	0
1,000	1,025	62	0	0	0
1,025	1,050	67	0	0	0
1,050	1,075	71	0	0	0
1,075	1,100	76	0	0	0
1,100	1,125	80	0	0	0
1,125	1,150	85	0	0	0
1,150	1,175	89	0	0	0
1,175	1,200	94	0	0	0
1,200	1,225	98	0	0	0
1,225	1,250	103	0	0	0
1,250	1,275	107	0	0	0
1,275	1,300	112	0	0	0
1,300	1,325	116	0	0	0
1,325	1,350	121	1	0	0
1,350	1,375	125	5	0	0
1,375	1,400	130	10	0	0
1,400	1,425	134	14	0	0
1,425	1,450	139	19	0	0
1,450	1,475	143	23	0	0
1,475	1,500	148	28	0	0

TABLE III — Continued

Taxable years beginning after December 31, 1953

If adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
\$1,500	\$1,525	\$152	\$32	\$0	\$0
1,525	1,550	157	37	0	0
1,550	1,575	161	41	0	0
1,575	1,600	166	46	0	0
1,600	1,625	170	50	0	0
1,625	1,650	175	55	0	0
1,650	1,675	179	59	0	0
1,675	1,700	184	64	0	0
1,700	1,725	188	68	0	0
1,725	1,750	193	73	0	0
1,750	1,775	197	77	0	0
1,775	1,800	202	82	0	0
1,800	1,825	206	86	0	0
1,825	1,850	211	91	0	0
1,850	1,875	215	95	0	0
1,875	1,900	220	100	0	0
1,900	1,925	224	104	0	0
1,925	1,950	229	109	0	0
1,950	1,975	233	113	0	0
1,975	2,000	238	118	0	0
2,000	2,025	242	122	2	0
2,025	2,050	247	127	7	0
2,050	2,075	251	131	11	0
2,075	2,100	256	136	16	0
2,100	2,125	260	140	20	0
2,125	2,150	265	145	25	0
2,150	2,175	269	149	29	0
2,175	2,200	274	154	34	0
2,200	2,225	278	158	38	0
2,225	2,250	283	163	43	0
2,250	2,275	287	167	47	0
2,275	2,300	292	172	52	0
2,300	2,325	296	176	56	0

\$ 400 INCOME TAX—SUPPLEMENT PROVISIONS

TABLE III—Continued
Taxable years beginning after December 31, 1953

If adjusted gross income is—		And the number of exemptions is—													
At least	But less than	1		2			3			4	5	6	7	8 or more	
		And tax-payer is single or married filing separately	And tax-payer is head of household	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed						
		The tax shall be—													
\$2,325	\$2,350	\$301	\$301	\$181	\$181	\$181	\$61	\$61	\$61	\$0	\$0	\$0	\$0	\$0	
2,350	2,375	305	305	185	185	185	65	65	65	0	0	0	0	0	
2,375	2,400	310	310	190	190	190	70	70	70	0	0	0	0	0	
2,400	2,425	314	314	194	194	194	74	74	74	0	0	0	0	0	
2,425	2,450	319	319	199	199	199	79	79	79	0	0	0	0	0	
2,450	2,475	323	323	203	203	203	83	83	83	0	0	0	0	0	
2,475	2,500	328	328	208	208	208	88	88	88	0	0	0	0	0	
2,500	2,525	332	332	212	212	212	92	92	92	0	0	0	0	0	
2,525	2,550	337	337	217	217	217	97	97	97	0	0	0	0	0	
2,550	2,575	341	341	221	221	221	101	101	101	0	0	0	0	0	
2,575	2,600	346	346	226	226	226	106	106	106	0	0	0	0	0	
2,600	2,625	350	350	230	230	230	110	110	110	0	0	0	0	0	
2,625	2,650	355	355	235	235	235	115	115	115	0	0	0	0	0	
2,650	2,675	359	359	239	239	239	119	119	119	0	0	0	0	0	
2,675	2,700	364	364	244	244	244	124	124	124	4	0	0	0	0	
2,700	2,725	368	368	248	248	248	128	128	128	8	0	0	0	0	
2,725	2,750	373	373	253	253	253	133	133	133	13	0	0	0	0	
2,750	2,775	377	377	257	257	257	137	137	137	17	0	0	0	0	
2,775	2,800	382	382	262	262	262	142	142	142	22	0	0	0	0	
2,800	2,825	386	386	266	266	266	146	146	146	26	0	0	0	0	
2,825	2,850	391	391	271	271	271	151	151	151	31	0	0	0	0	
2,850	2,875	395	395	275	275	275	155	155	155	35	0	0	0	0	
2,875	2,900	400	400	280	280	280	160	160	160	40	0	0	0	0	
2,900	2,925	405	404	284	284	284	164	164	164	44	0	0	0	0	
2,925	2,950	410	409	289	289	289	169	169	169	49	0	0	0	0	
2,950	2,975	415	414	293	293	293	173	173	173	53	0	0	0	0	
2,975	3,000	420	419	298	298	298	178	178	178	58	0	0	0	0	
3,000	3,050	427	426	305	305	305	185	185	185	65	0	0	0	0	
3,050	3,100	437	435	314	314	314	194	194	194	74	0	0	0	0	
3,100	3,150	447	445	323	323	323	203	203	203	83	0	0	0	0	
3,150	3,200	457	454	332	332	332	212	212	212	92	0	0	0	0	
3,200	3,250	467	464	341	341	341	221	221	221	101	0	0	0	0	
3,250	3,300	476	473	350	350	350	230	230	230	110	0	0	0	0	
3,300	3,350	486	482	359	359	359	239	239	239	119	0	0	0	0	
3,350	3,400	496	492	368	368	368	248	248	248	128	8	0	0	0	

TABLE III—Continued

Taxable years beginning after December 31, 1953

If adjusted gross income is—		And the number of exemptions is—												
At least	But less than	1		2			3			4	5	6	7	8 or more
		And tax-payer is single or married filing separately	And tax-payer is head of household	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed	And tax-payer is single or married filing separately	And tax-payer is head of household	And a joint return is filed					
		The tax shall be—												
\$3,400	\$3,450	\$506	\$501	\$377	\$377	\$377	\$257	\$257	\$257	\$137	\$17	\$0	\$0	\$0
3,450	3,500	516	511	386	386	386	266	266	266	146	26	0	0	0
3,500	3,550	526	520	395	395	395	275	275	275	155	35	0	0	0
3,550	3,600	536	530	404	404	404	284	284	284	164	44	0	0	0
3,600	3,650	546	539	414	413	413	293	293	293	173	53	0	0	0
3,650	3,700	556	549	424	423	422	302	302	302	182	62	0	0	0
3,700	3,750	566	558	434	432	431	311	311	311	191	71	0	0	0
3,750	3,800	575	567	443	441	440	320	320	320	200	80	0	0	0
3,800	3,850	585	577	453	451	449	329	329	329	209	89	0	0	0
3,850	3,900	595	586	463	460	458	338	338	338	218	98	0	0	0
3,900	3,950	605	596	473	470	467	347	347	347	227	107	0	0	0
3,950	4,000	615	605	483	479	476	356	356	356	236	116	0	0	0
4,000	4,050	625	615	493	489	485	365	365	365	245	125	5	0	0
4,050	4,100	635	624	503	498	494	374	374	374	254	134	14	0	0
4,100	4,150	645	634	513	508	503	383	383	383	263	143	23	0	0
4,150	4,200	655	643	523	517	512	392	392	392	272	152	32	0	0
4,200	4,250	665	653	533	527	521	401	401	401	281	161	41	0	0
4,250	4,300	674	662	542	536	530	410	410	410	290	170	50	0	0
4,300	4,350	684	671	552	545	539	420	419	419	299	179	59	0	0
4,350	4,400	694	681	562	555	548	430	429	428	308	188	68	0	0
4,400	4,450	704	690	572	564	557	440	438	437	317	197	77	0	0
4,450	4,500	714	700	582	574	566	450	448	446	326	206	86	0	0
4,500	4,550	724	709	592	583	575	460	457	455	335	215	95	0	0
4,550	4,600	734	719	602	593	584	470	467	464	344	224	104	0	0
4,600	4,650	744	728	612	602	593	480	476	473	353	233	113	0	0
4,650	4,700	754	738	622	612	602	490	486	482	362	242	122	2	0
4,700	4,750	764	747	632	621	611	500	495	491	371	251	131	11	0
4,750	4,800	773	756	641	630	620	509	504	500	380	260	140	20	0
4,800	4,850	783	766	651	640	629	519	514	509	389	269	149	29	0
4,850	4,900	793	775	661	649	638	529	523	518	398	278	158	38	0
4,900	4,950	803	785	671	659	647	539	533	527	407	287	167	47	0
4,950	5,000	813	794	681	668	656	549	542	536	416	296	176	56	0

§ 400 INCOME TAX—SUPPLEMENT PROVISIONS

Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(a), 55 Stat. 689, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 104(a), 56 Stat. 803; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 102(a), 58 Stat. 26; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 5(a), 58 Stat. 232; June 30, 1944, c. 332, § 2(a), 58 Stat. 647; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 103(a), 59 Stat. 560; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title IV, § 401(a), 62 Stat. 128; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. I, § 102, 64 Stat. 911; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 102, 65 Stat. 462.

Historical Note

1951 Amendment. Act Oct. 20, 1951, amended section to provide new tables reflecting the tax increase.

1950 Amendment. Act Sept. 23, 1950, amended section to provide new tables to reflect the increased tax rates.

1948 Amendment. Act Apr. 2, 1948, amended section to incorporate the "income-splitting" provisions applicable to husband and wife.

1945 Amendment. Tax table in this section amended generally by Act Nov. 8, 1945, § 103(a).

1944 Amendment. Act June 30, 1944, amended table by inserting "110" for "100" in third column immediately following "105".

Section amended generally by Act May 29, 1944, which among other changes made Supp. T applicable to adjusted gross incomes up to \$5000 instead of \$3000, and through the use of the new concept of adjusted gross income made it applicable to individuals without regard to the source of the income.

Act Feb. 25, 1944, amended section by adding "and 450" following "11, 12," and by rewording "is \$3,000 or less" to read "is less than \$3,000".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

Effective Date of 1951 Amendment. Amendment as applicable only with respect to taxable years beginning after Oct. 31, 1951, and to taxable years beginning on Jan. 1, 1951, and ending on Dec. 31, 1951, see note set out under section 12 of I.R.C.1939.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as applicable only with respect to taxable years ending after Dec. 31, 1949, see note set out under section 11 of I.R.C. 1939.

Effective Date of 1948 Amendment. Section 401(b) of Act Apr. 2, 1948, provided that amendment of this section by section 401(a) of said Act Apr. 2, 1948, should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in 1947 and ending in 1948 should be governed by section 106(d) of I.R.C.1939.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, § 103(a), was made applicable with respect to taxable years

beginning after Dec. 31, 1945, by section 103(b) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 108 and 710 of I.R.C.1939.

Effective Date of 1944 Amendments. Act June 30, 1944, § 2(a), was made applicable to the computation of income tax with respect to the taxable years beginning after Dec. 31, 1943, by section 2(b) thereof.

Act May 29, 1944, § 5(a), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Amendment of section by Act Feb. 25, 1944, § 102(a), was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

1944—Feb. 25, 1944, 12:49 p.m., E.W.T., c. 63, Title I, § 136, 58 Stat. 53.

1942—Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p.m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong. Service, p. 3053; Nov. 8, 1945, 1945 U.S. Code Cong.Service, p. 814; May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 401. Definition of "exemption"

As used in the table in section 400, the term "number of exemptions" means the number of the exemptions allowed under section 25(b) as credits against net income for the purpose of the normal tax and the surtax imposed by sections 11 and 12. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(a), 55 Stat. 691, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 104(b), 56 Stat. 805; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 5(a), 58 Stat. 234; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 102(b) (10), 59 Stat. 559.

Historical Note

1945 Amendment. Act Nov. 8, 1945, § 102(b) (10), amended section generally.

1944 Amendment. Act May 29, 1944, amended catchline and incorporated in section a definition of the term "surtax exemption".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

Effective Date of 1945 Amendment. Act Nov. 8, 1945, § 102(b) (10), was made applicable to taxable years beginning after Dec. 31, 1945, by section 102(c) thereof. For treatment of taxable years beginning in 1945 and ending in 1946, see sections 106 and 710 of I.R.C.1939.

Effective Date of 1944 Amendment. Act May 29, 1944, § 5(a), was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1941—Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, see 1945 U.S.Code Cong.Service, p. 814. See, also, Act May 29, 1944, 1944 U.S.Code Cong.Service, p. 1056.

§ 402. Manner and effect of election

The election referred to in section 400 shall be exercised in the manner provided in regulations prescribed by the Commissioner with the approval of the Secretary. For cases in which election to take the standard deduction also constitutes an election to pay the tax imposed by this supplement, see section 23(aa) (3) (D). For cases in which election to file a return without showing tax thereon constitutes an election to pay the tax imposed by this supplement, see section 51(f). In the case of a head of a household electing to have his tax computed by the collector pursuant to the provisions of section 51(f), the tax imposed by section 400 shall be computed without regard to the status of the taxpayer as a head of a household. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(a), 55 Stat. 692, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 5(a), 58 Stat. 234; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 301 (b) (2), 65 Stat. 482.

Historical Note

1951 Amendment. Act Oct. 20, 1951, added last sentence.

1944 Amendment. Act May 29, 1944, amended catchline by inserting "and effect", and amended section to provide that the manner of election to pay tax under Supp. T. should be exercised in the manner prescribed by the Commissioner.

Effective Date of 1951 Amendment. Section 301(c) of Act Oct. 20, 1951, provided that the amendment should be applicable with respect to taxable years ending after June 30, 1950.

Effective Date of 1944 Amendment. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

§ 402 INCOME TAX—SUPPLEMENT PROVISIONS

Effective Date. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1941—Sept. 20, 1941, 12 15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 693.

§ 403. Credits not allowed

For credits against tax and against net income not allowed, in the case of a taxpayer who elects to pay the tax imposed by this supplement, because of the fact that such election constitutes an election to take the standard deduction, see section 23(aa). Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(a), 55 Stat. 692, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 5(a), 58 Stat. 234.

Historical Note

1944 Amendment. Act May 29, 1944, amended section generally to incorporate reference to standard deduction provided for in section 23aa.

Effective Date of 1944 Amendment. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 108 of Act Sept. 20, 1941, provided as follows: "No

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Act May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

amendment made by this title [sections 101-118 of 1941 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S. Code Cong. Service, p. 1056.

§ 404. Certain taxpayers ineligible

This supplement shall not apply to a nonresident alien individual, to a citizen of the United States entitled to the benefits of section 251, to an estate or trust, or to an individual making a return for a period of less than twelve months on account of a change in the accounting period. For provisions making both husband and wife ineligible to elect to pay the tax imposed by this supplement if either does not elect to take the standard deduction, see section 23(aa) (4). Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 102(a), 55 Stat. 692, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 104(c), 56 Stat. 805; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 102(b), 58 Stat. 31; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 5(a), 58 Stat. 234.

Historical Note

1944 Amendments. Act May 29, 1944, amended section by adding provision relating "to a citizen of the United States entitled to the benefits of section 251" and omitted provision relating to a married individual.

Act Feb. 25, 1944, amended section by adding "to a citizen of the United States entitled to the benefits of section 251," following "nonresident alien individual."

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety, adding all after "estate or trust".

Effective Date of 1944 Amendments. Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943 by section 2 thereof.

Amendment of section by Act Feb. 25, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 136 of Act Feb. 25, 1944, provided as follows: "No amendment made by this title [sections 101-137 of 1944 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Acts:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act May 29, 1944, see 1944 U.S. Code Cong. Service, p. 1056.

SUPPLEMENT U.—TAXATION OF BUSINESS INCOME OF CERTAIN SECTION 101 ORGANIZATIONS

Historical Note

1950 Amendment. Heading amended to read as now set out by Act Sept. 23, 1950, c. 994, Title III, Pt. I, § 301(a), 64 Stat. 947.

Prior to said amendment, the supplement, as added by Act June 9, 1943, 7 p. m., E.W.T., c. 120, § 8, 57 Stat. 149, read as follows: "Supplement U.—Abate-

ment of Tax for Members of Armed Forces Upon Death".

Effective Date of 1950 Amendment. Amendment of heading as applicable only with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C. 1939.

§ 421. Imposition of tax

(a) **In General.** There shall be levied, collected, and paid for each taxable year beginning after December 31, 1950—

(1) upon the supplement U net income (as defined in subsection (c)) of every organization described in subsection (b) (1), a normal tax of 25 per centum of the supplement U net income, and a surtax of 22 per centum of the amount of the supplement U net income in excess of \$25,000; except that (A) in the case of taxable years beginning before April 1, 1951, and ending after March 31, 1951, the normal tax shall be 28 $\frac{3}{4}$ per centum of the Supplement U net income, and (B) in the case of taxable years beginning after March 31, 1951, and before April 1, 1954, the normal tax shall be 30 per centum of the Supplement U net income.

(2) upon the supplement U net income of every trust described in subsection (b) (2), a normal tax computed at the rate and in the manner provided in section 11 and a surtax computed at the rates and in the manner provided in section 12(b). In making such computations for the purposes of this section, the term "the amount of the net income in excess of the credits against net income provided in section 25" as used in section 11 shall be read as "the amount of the supplement U net income" and the term "surtax net income" as used in section 12(b) shall be read as "supplement U net income".

(b) **Organizations subject to tax.**

(1) **Organizations taxable as corporations**

(A) **Organizations Exempt Under Section 101(1), (6), (7) and (14).** The taxes imposed by subsection (a) (1) shall supply in the case of any organization (other than a church, a convention or association of churches, or a trust described in paragraph (2)) which is exempt, except as provided in this supplement, from taxation under this chapter by reason of paragraph (1), (6), or (7) of section 101. Such taxes shall also apply in the case of a corporation described in section 101(14) if the income is payable to an organization which itself is subject to the tax imposed by

§ 421 INCOME TAX—SUPPLEMENT PROVISIONS

subsection (a) or to a church or to a convention or association of churches.

(B) **State Colleges and Universities.** The taxes imposed by subsection (a) (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof or by any agency or instrumentality of any one or more governments or political subdivisions. Such taxes shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(2) **Trusts taxable at individual rates.** The taxes imposed by subsection (a) (2) shall apply in the case of any trust which is exempt, except as provided in this supplement, from taxation under this chapter by reason of paragraph (6) of section 101 and which, if it were not for such exemption, would be subject to the provisions of supplement E.

(c) **Definition of Supplement U Net Income.** The term "supplement U net income" of an organization means the amount by which its unrelated business net income (as defined in section 422) exceeds \$1,000.

(d) **Foreign organizations.** The supplement U net income of an organization described in subsection (b) (1) or (2) which is a foreign organization shall be its supplement U net income derived from sources within the United States determined in accordance with the rules of section 119 and sections 212, 213(a), 231(c) and (d), and 232(a). Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 8, 57 Stat. 149, amended Aug. 5, 1947, c. 496, § 1, 61 Stat. 778; Aug. 8, 1947, c. 515, § 9, 61 Stat. 918; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. I, § 301(a), 64 Stat. 947; Jan. 3, 1951, 10:13 a. m., c. 1199, Title II, § 201(d), 64 Stat. 1216; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 121(e), Title III, § 339(a), 65 Stat. 468, 510.

Historical Note

1951 Amendment. Subsec. (a) (1) amended by Acts Oct. 20, 1951, § 121 (e), and Jan. 3, 1951. Act Oct. 20, 1951, added exception clause, Act Jan. 3, 1951, increased the surtax rate by 2 percentage points from 20 to 22 per centum.

Subsec. (b) (1) added by Act Oct. 20, 1951, § 339(a).

1950 Amendment. Act Sept. 23, 1950, amended section generally to omit former provisions relating to abatement of tax for members of armed forces upon death.

1947 Amendment. Section amended by Acts Aug. 8, 1947, and Aug. 5, 1947. Act Aug. 8, 1947, amended section by limiting its operation to members of the armed forces dying prior to Jan. 1, 1948 instead of prior to the termination of the war as proclaimed by the President.

Act Aug. 5, 1947, amended section generally and provided for death prior to Jan. 1, 1943, instead of prior to the termination of the present war as proclaimed by the President, and accepted from income taxes, with respect to any taxable year ending on or after Dec. 7, 1941, an individual dying prior to Jan. 1, 1943, who was a member of the armed forces, whether or not the tax for such years was paid.

Effective Date of 1951 Amendments. Amendment of subsec. (a) (1) as appli-

cable to taxable years beginning after Dec. 31, 1950 and ending after Mar. 31, 1951, see note set out under section 13 of I.R.C.1939.

Amendment of subsec. (b) (1) made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 339(c) of Act Oct. 20, 1951.

Amendment of subsec. (a) (1) by Act Jan. 3, 1951 as applicable with respect to taxable years beginning on or after July 1, 1950, see note set out under section 15 of I.R.C.1939.

Effective Date of 1950 Amendments. Section 303 of Act Sept. 23, 1950, provided that: "The amendments made by this part [sections 421-424 of I.R.C.1939 and amendments of sections 101, 127(c) (1), (2), 143, 221, and 238 of I.R.C.1939] shall be applicable only with respect to taxable years beginning after December 31, 1950. The determination as to whether an organization is exempt under section 101 of the Internal Revenue Code [section 101 of I.R.C.1939] from taxation for any taxable year beginning before January 1, 1951, shall be made as if section 301(b) of this Act [amending section 101 of I.R.C.1939] had not been enacted and without inferences drawn from the fact that the amendment made by such section is not expressly made applicable with respect to taxable years beginning before January 1, 1951."

Limitations On Claim For Credit Or Refund. Section 2 of Act Aug. 5, 1947, provided: "If at any time prior to January 1, 1948, the allowance of a credit or refund of an overpayment of the tax for any taxable year specified in section 421(a) of the Internal Revenue Code (as amended by this Act [subsection (a) of this section]) is prevented (except for the provisions of section 3801 [section 3801 of I.R.C.1939]) by the operation of any law or rule of law, a credit or refund of the overpayment of such tax to the extent that the overpayment is attributable to the change in law made by this Act may, nevertheless, be allowed or made if a claim therefor is filed before January 1, 1949."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its

application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p.m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also, Acts Jan. 3, 1951, 1950 U.S.Code Cong. Service, p. 4027; Sept. 23, 1950, 1950 U.S. Code Cong.Service, p. 3053; Aug. 8, 1947, 1947 U.S.Code Cong.Service, p. 1668; Aug. 5, 1947, 1947 U.S.Code Cong.Service, p. 1612.

§ 422. Unrelated business net income

(a) **Definition.** The term "unrelated business net income" means the gross income derived by any organization from any unrelated trade or business (as defined in subsection (b)) regularly carried on by it, less the deductions allowed by section 23 which are directly connected with the carrying on of such trade or business, subject to the following exceptions, additions, and limitations:

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or net income from the property, and all deductions directly connected with such income.

(3) There shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(4) Notwithstanding paragraph (3), in the case of a supplement U lease (as defined in section 423(a)) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 423(d) (1) and there shall be allowed, as a deduction, the amount ascertained under section 423(d) (2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than (A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or (B) property held primarily for sale to customers in the ordinary course of the trade or business. This paragraph shall not apply with respect to the cutting of timber which is considered, upon the application of section 117(k) (1), as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 23(s) shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carry-back or carry-over to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 122 without taking into account any amount of income or deduction which is excluded under this supplement in computing the unrelated business net income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 122 shall not include any taxable year for which the organization was not subject to the provisions of this supplement.

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(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) (A) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(B) In the case of an organization operated primarily for the purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) (A) In the case of any organization described in section 421 (b) (1), the so-called "charitable contribution" deduction allowed by section 23(q) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 5 per centum of the unrelated business net income computed without the benefit of this subparagraph.

(B) In the case of any trust described in section 421 (b) (2), the so-called "charitable contribution" deduction allowed by section 23(o) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 23(o) shall be considered as a gift or contribution. The deduction allowed by this subparagraph shall not exceed 15 per centum of the unrelated business net income computed without the benefit of this subparagraph.

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business net income shall, subject to the exceptions, additions, and limitations contained in paragraphs (1) through (9) above, include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business net income shall be based upon the income and deductions of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1951) ending within or with the taxable year of the organization. In the case of an organization described in section 3813(a) (2) which is a member of a partnership all of whose members are organizations described in section 3813(a) (2), if a trade or business regularly carried on by such partnership is an unrelated trade or business with respect to such organization, such organization shall, for taxable years beginning before January 1, 1954, be allowed a deduction in an amount equal to the portion of the gross income of such partnership from such unrelated trade or business which such organization is required (by a provision of a written contract executed by such organization prior to January 1, 1950, which provision expressly deals with the disposition of the gross income of the partnership) to pay within the taxable year in discharge of indebtedness incurred by such organization in acquiring its share of such trade or business, or to irrevocably set aside within the taxable year for the discharge of such indebtedness (to the extent that such amount has been so paid or set aside) if (i) such partnership was formed prior to January 1, 1950, for the purpose of carrying on such trade or business, and (ii) substantially all the assets used in carrying on such trade or business were acquired by it or by its members prior to such

date. A used in the preceding sentence, the word "indebtedness" does not include indebtedness incurred after January 1, 1950.

(b) **Unrelated trade or business.** The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 421(a), any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101 (or, in the case of an organization described in section 421 (b) (1) (B), to the exercise or performance of any purpose or function described in section 101(c)), except that such term shall not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 101(6) or in the case of a college or university described in section 421(b) (1) (B), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions. The term "unrelated trade or business" means, in the case of a trust computing its unrelated business net income under this section for the purposes of section 162(g) (1), any trade or business regularly carried on by such trust or by a partnership of which it is a member. If a publishing business carried on by an organization during a taxable year beginning before January 1, 1953, is, without regard to this sentence, an unrelated trade or business, but before the beginning of the third succeeding taxable year the business is carried on by it (or by a successor who acquired such business in a liquidation which would constitute a tax-free exchange under section 112(b) (6)) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in section 101(6), such publishing business shall not be considered, for the taxable year, as an unrelated trade or business. Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. I, § 301(a), 64 Stat. 947, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 339(b), 347(a), 348(a), 65 Stat. 510, 518.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 348(a), to add last sentence.

Subsec. (b) amended by Act Oct. 20, 1951, §§ 339(b), 347(a), respectively, which inserted "(or, in the case * * * section 101(6))" following "section 101" in opening paragraph, inserted "or in the case * * * section 421(b) (1) (13)" following "section 101(6)" in paragraph (2), and added last sentence.

Effective Date of 1951 Amendment. Amendment of subsec. (a) made applicable with respect to taxable years beginning after Dec. 31, 1950, and prior to Jan. 1, 1954, by section 348(b) of Act Oct. 20, 1951.

Amendment of subsec. (b) by section 339(b) of Act Oct. 20, 1951, made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 339(c) of Act Oct. 20, 1951. Amendment

of subsec. (b) by section 347(a) made applicable with respect to taxable years beginning after Dec. 31, 1950, and prior to Jan. 1, 1953, by section 347(b) of Act Oct. 20, 1951.

Effective Date. Section as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

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amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 423. Supplement U lease

(a) **Definition of supplement U lease.** The term "supplement U lease" means a lease for a term of more than five years of real property by an organization (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a supplement U lease indebtedness (as defined in subsection (b)) with respect to such property. In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition. No lease shall be considered a supplement U lease if (A) such lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101, or (B) the lease is of premises in a building primarily designed for occupancy, and occupied, by the organization. If a lease for more than five years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than five years to any other tenant of the organization, leases of the real property for more than five years shall be considered as supplement U leases during the taxable year only if—

(1) the rents derived from the real property during the taxable year under such leases represent 50 per centum or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under such leases represents, at any time during the taxable year, 50 per centum or more of the total area of the real property rented at such time; or

(2) the rent derived from the real property during the taxable year from any tenant under such a lease, or from a group of tenants (under such leases) who are (A) members of an affiliated group (as defined in section 141) or (B) partners, represents more than 10 per centum of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 per centum of the total area of the real property rented at such time.

(b) **Supplement U lease indebtedness.** The term "supplement U lease indebtedness" means, with respect to any real property leased for a term of more than five years, the unpaid amount of—

(1) the indebtedness incurred by the lessor in acquiring or improving such property;

(2) the indebtedness incurred prior to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(3) the indebtedness incurred subsequent to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien

shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by gift, bequest, or devise prior to July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property. Where real property was acquired by gift, bequest, or devise prior to July 1, 1950, subject to a lease requiring improvements in such property upon the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection. In the case of a corporation described in section 101(14), all of the stock of which was acquired prior to July 1, 1950, by an organization described in paragraph (1), (6), or (7) of section 101 (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation prior to July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into prior to such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this subsection. In determining the amount of the supplement U lease indebtedness where only a portion of the real property is subject to a supplement U lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(c) Personal property leased with real property. For the purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(d) Treatment of supplement U lease rents and deductions. In computing under section 422(a) the unrelated business net income for any taxable year—

(1) Percentage of rents taken into account. There shall be included with respect to each supplement U lease, as an item of gross income derived from an unrelated trade or business, an amount which is the same percentage (but not in excess of 100 per centum) of the total rents derived during the taxable year under such lease as (A) the supplement U lease indebtedness, at the close of the taxable year, with respect to the premises covered by such lease is of (B) the adjusted basis, at the close of the taxable year, of such premises.

(2) Percentage of deductions taken into account. There shall be allowed with respect to each supplement U lease, as a deduction to be taken into account in computing unrelated business net income, an amount which is the same percentage (but not in excess of 100 per centum) of the sum determined under paragraph (3) as the amount determined under clause (A) of paragraph (1) is of the amount determined under clause (B) of such paragraph.

(3) Deductions allowable. The sum referred to in paragraph (2) is the sum of the following deductions allowable under section 23:

(A) Taxes and other expenses paid or accrued during the taxable year upon or with respect to the real property subject to the supplement U lease.

(B) Interest paid or accrued during the taxable year on the supplement U lease indebtedness.

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(C) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the supplement U lease, there shall be taken into account under subparagraph (A), (B), or (C) only those amounts which are properly allocable to the premises covered by such lease. Added Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title III, Pt. I, § 301(a), 64 Stat. 947.

Historical Note

Effective Date. Section as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 424. Taxes of foreign countries and possessions of the United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 421 (a) to the extent provided in section 131; and in the case of the tax imposed by section 421(a), the term "normal-tax net income" and the term "net income" as used in section 131 shall be read as "supplement U net income". Added Sept. 23, 1950, 3:15 p. m. E.D.T., c. 994, Title III, Pt. I, § 301(a), 64 Stat. 947.

Historical Note

Effective Date. Section as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 421 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

SUBCHAPTER D.—EXCESS PROFITS TAX

§§ 430-474

Historical Note

Sections 430-459 constituted Part I—Rate and Computation of Tax.

Sections 461-465 constituted Part II—Excess Profits Credit Based On Income In Connection With Certain Exchanges

Sections 470-472 constituted Part III—Invested Capital In Connection With Certain Changes And Liquidations.

Section 474 constituted Part IV—Excess Profits Credit Based On Income In Connection With Certain Taxable Acquisitions Occurring Prior To December 1, 1950.

Sections 430-458 added to I.R.C.1939 by Act Jan. 3, 1951, 10:13 a.m., c. 1199, Title I, § 101, 64 Stat. 1187-1191

Section 459 added to I.R.C.1939 by Act Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title V, § 516(a), 517-519, 65 Stat. 553.

Sections 461-465 added to I.R.C.1939 by Act Jan. 3, 1951, 10:13 a.m., c. 1199, Title I, § 101, 64 Stat. 1191-1210

Sections 470-472 added to I.R.C.1939 by Act Jan. 3, 1951, 10:13 a.m., c. 1199, Title I, § 101, 64 Stat. 1210-1216.

Section 474 added to I.R.C.1939 by Act Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title V, § 521(a), 65 Stat. 557.

Section 430 amended Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title I, §§ 121(b), 131(b), Title V, § 501, 65 Stat. 465, 473, 541; July 16, 1953, c. 202, 67 Stat. 175, related to imposition of tax.

Section 431 related to definition of adjusted excess profits net income.

Section 432, amended July 16, 1953, c. 202, 67 Stat. 175, related to unused excess profits credit adjustment.

Section 433 amended Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title III, §§ 325(e)(1), 336(c)(1), Title V, §§ 502, 508(b, c), 65 Stat. 502, 508, 543, 549; July 8, 1952, c. 592, § 1(c), 66 Stat. 444; July 21, 1952, c. 951, § 4, 66 Stat. 819; Aug. 15, 1953, c. 512, Title I, § 105(a), 67 Stat. 616, related to excess profits net income.

Section 434 related to excess profits credit allowance.

Section 435, amended Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title V, §§ 503, 504

(a), 505, 506(a, c), 507, 509(b) (1), 516(b), 521(b) (1), Title VI, § 602(a), 65 Stat. 544, 550, 553, 560, 563, related to excess profits credit based on income.

Section 438 related to excess profits credit based on invested capital.

Section 437, amended Oct. 10, 1951, c. 480, § 1, 65 Stat. 387, related to invested capital credit.

Section 438, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 506(b), 65 Stat. 546, related to new capital credit changes.

Section 439 related to borrowed capital.

Section 440, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title IV, § 325(e) (2), Title V, § 508(a), 65 Stat. 502, 549, related to admissible and inadmissible assets.

Section 441 related to rules for determining credit.

Section 442, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title D, §§ 509(a), 510, 65 Stat. 550, related to average base period net income—abnormalities during base period.

Section 443, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 511, 65 Stat. 551, related to average base period net income—change in products or services.

Section 444, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 520, 65 Stat. 557, related to average base period net income—increase in capacity for production or operation.

Section 445, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 512, 65 Stat. 552, related to average base period net income—new corporation.

Sections 446, 447 related to average base period net income—depressed industry subgroups; and industry base period rates of return.

Section 448, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, §§ 513, 514, 65 Stat. 552, related to excess profits credit—regulated public utilities.

Section 449 related to personal service corporations.

Section 450, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 522, 65 Stat. 562, related to corporations engaged in mining of strategic minerals.

Sections 451, 452 related to capitalization of advertising, etc., expenditures and adjustment in case of position inconsistent with prior income tax liability.

Section 453, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 515, 65 Stat. 552, related to nontaxable income from certain mining and timber operations, and from natural gas properties.

Section 454, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title III, § 313(c), 65 Stat. 490, related to exempt corporations.

Sections 455, 456 related to relief for instalment basis taxpayers and taxpayers with income from long-term contracts

and abnormalities in income in taxable period.

Section 457, amended July 21, 1952, c. 951, § 1, 66 Stat. 818, related to corporations completing contracts or making deposits under Merchant Marine Act.

Section 458 related to historical invested capital.

Section 459, amended July 21, 1952, c. 951, § 2, 66 Stat. 818, related to miscellaneous provisions.

Section 461, amended Oct. 21, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 509(b) (2), 521(b) (2), 65 Stat. 551, 561 related to definitions.

Section 462, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, §§ 504(b), 521(b) (3), (4), 65 Stat. 544, 561, related to average base period net income—determination.

Section 463, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 521(b) (5), 65 Stat. 562, related to capital changes.

Section 464, amended Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title V, § 521(b) (6), 65 Stat. 562, related to capital changes during the base period.

Section 465 related to foreign corporations.

Sections 470–472 related to adjusted basis of assets received in certain intercorporate liquidations, exchanges and invested capital adjustment at the time of taxfree intercorporate liquidations.

Section 474 related to excess profits credit based on income.

Termination Date. 1950 excess profits tax terminated Dec. 31, 1953 in view of the extension to such date effected by the amendment of Act July 16, 1953, c. 202 67 Stat. 175 to sections 430(a, c) and 432 (b), I.R.C.1939.

Text of Revenue Acts. Complete original text of Revenue Acts and amendments thereto classified to sections 430–474, see Special Excess Profits Tax Volume and volumes "Title 26—Internal Revenue Acts".

Victory Tax On Individuals. Former subchapter D, consisting of sections 450–456, 465–470, 475 and 476, was added to the Internal Revenue Code by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 172(a), 56 Stat. 884 and made effective Jan. 1 1943 and applicable to all wages as defined in Part II of said subchapter [former sections 465–470 of I.R.C.1939] paid on or after such date by section 172(g) of said Act Oct. 21, 1942.

Former section 450, amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 106(a), 58 Stat. 31, related to the imposition of the victory tax.

Former sections 451 and 452, related to victory tax net income and specific exemptions, respectively.

Former section 453, amended Oct. 28, 1943, c. 290, § 1, 57 Stat. 584, related to credit against victory tax.

Former sections 454 and 455 related to post war credit or refund of victory tax and returns, respectively.

Former section 456, amended Oct. 28, 1943, c. 290, § 2(c), 57 Stat. 584; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 106(c), 68 Stat. 31, related to limitation on victory tax.

Former sections 465-470 related to definitions, tax collected at source, withholding agent, return and payment by withholding agent, receipts and penalties, respectively.

Former section 475 related to definitions.

Former section 476, amended June 9, 1943, 7 p. m., E.W.T., c. 120, § 2(c), 57 Stat. 139, related to expiration date.

Said former sections 450-452, 455, 456, 465-470, 475, and 476, were repealed by Act May 29, 1944, 7 p. m., E.W.T., c. 210, Part I, § 6(a), 58 Stat. 234, and repeal made applicable with respect to taxable years beginning after Dec. 31, 1943 by section 2 of said Act May 29, 1944.

Said former section 453 was repealed by Act Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 106(b), 58 Stat. 31, and repeal made applicable to taxable years beginning after Dec. 31, 1943 by section 101 of said Act Feb. 25, 1944.

Said former section 454 was repealed by Act Oct. 28, 1943, c. 290, § 2(a), 57 Stat. 584, and repeal made applicable with respect to taxable years beginning after Dec. 31, 1942 by section 3 of said Act Oct. 28, 1943.

SUBCHAPTER E.—TAX ON SELF-EMPLOYMENT INCOME

Historical Note

1950 Amendment. Subchapter added by Act Aug. 28, 1950, c. 809, Title II, § 208(a), 64 Stat. 504.

§ 480. Rate of tax

In addition to other taxes, there shall be levied, collected, and paid for each taxable year beginning after December 31, 1950, upon the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1950, and before January 1, 1954, the tax shall be equal to 2¼ per centum of the amount of the self-employment income for such taxable year.

(2) In the case of any taxable year beginning after December 31, 1953, and before January 1, 1960, the tax shall be equal to 3 per centum of the amount of the self-employment income for such taxable year.

(3) In the case of any taxable year beginning after December 31, 1959, and before January 1, 1965, the tax shall be equal to 3¾ per centum of the amount of the self-employment income for such taxable year.

(4) In the case of any taxable year beginning after December 31, 1964, and before January 1, 1970, the tax shall be equal to 4½ per centum of the amount of the self-employment income for such taxable year.

(5) In the case of any taxable year beginning after December 31, 1969, the tax shall be equal to 4⅞ per centum of the amount of the self-employment income for such taxable year. Added Aug. 28, 1950, c. 809, Title II, § 208(a), 64 Stat. 540.

Historical Note

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287.

§ 481. Definitions

For the purposes of this subchapter—

(a) **Net earnings from self-employment.** The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183, from any trade or

business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate (including personal property leased with the real estate) and deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer;

(2) There shall be excluded income derived from any trade or business in which, if the trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 1426(h); and there shall be excluded all deductions attributable to such income;

(3) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 25 (a)) are received in the course of a trade or business as a dealer in stocks or securities;

(4) There shall be excluded any gain or loss (A) which is considered as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber or coal, if section 117 (j) is applicable to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(5) The deduction for net operating losses provided in section 23 (s) shall not be allowed;

(6) (A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(7) (A) In the case of any taxable year beginning before the effective date specified in section 3810, the term "possession of the United States" when used in section 251 with respect to citizens of the United States shall include Puerto Rico;

(B) In the case of any taxable year beginning on or after the effective date specified in section 3810, a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 116(l).

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the

partnership (even though beginning prior to January 1, 1951) ending within or with his taxable year.

(b) **Self-employment income.** The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year beginning after December 31, 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of: (A) \$3,600, minus (B) the amount of the wages paid to such individual during the taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than \$400.

For the purposes of clause (1) the term "wages" includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees) as would be wages under section 1426 (a) if such services constituted employment under section 1426(b). In the case of any taxable year beginning prior to the effective date specified in section 3810, an individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) and who is not a resident of the United States or of the Virgin Islands during such taxable year shall be considered, for the purposes of this subchapter, as a nonresident alien individual. An individual who is not a citizen of the United States but who is a resident of the Virgin Islands or (after the effective date specified in section 3810) a resident of Puerto Rico shall not, for the purposes of this subchapter, be considered to be a nonresident alien individual.

(c) **Trade or business.** The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23, except that such term shall not include—

(1) The performance of the functions of a public office;

(2) The performance of service by an individual as an employee (other than service described in section 1426 (b) (16) (B) performed by an individual who has attained the age of eighteen);

(3) The performance of service by an individual as an employee or employee representative as defined in section 1532;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(5) The performance of service by an individual in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, funeral director, or professional engineer; or the performance of such service by a partnership.

(d) **Employee and wages.** The term "employee" and the term "wages" shall have the same meaning as when used in subchapter A of chapter 9. Added Aug. 28, 1950, c. 809, Title II, § 208 (a), 64 Stat. 540, amended Sept. 23, 1950, 3:15 p. m., E.D.T. c. 994, Title II, § 221(j) (1), 64 Stat. 946; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 325(d), 65 Stat. 502.

Historical Note

References in Text. "Section 218 of the Social Security Act", referred to in subsec. (b), is classified to section 418 of Title 42, The Public Health and Welfare.

1951 Amendment. Subsec. (a) (4) amended by Act Oct. 20, 1951, § 325(d), which substituted "cutting of timber, or disposal of timber or coal" in lieu of "cutting or disposal of timber".

1950 Amendment. Subsec. (a) (7) amended by Act Sept. 23, 1950, § 221(j) (1), to make it applicable to Puerto Rico, and to provide the basis for computation of net earnings.

Effective Date of 1951 Amendment. Amendment of subsec. (a) (4) made applicable only with respect to taxable years ending after Dec. 31, 1950 (whether the contract was made on, before or after such date) but shall apply only with respect to amounts received or accrued after such date, by section 325(f) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23,

1950, as applicable with respect to taxable years beginning after Dec. 31, 1950, see note set out under section 251 of I.R. C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Act Sept. 23, 1950, 1950 U.S. Code Cong.Service, p. 3053.

§ 482. Miscellaneous provisions

(a) **Returns.** Every individual (other than a nonresident alien individual) having net earnings from self-employment of \$400 or more for the taxable year shall make a return containing such information for the purpose of carrying out the provisions of this subchapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Such return shall be considered a return required under section 51 (a). In the case of a husband and wife filing a joint return under section 51 (b), the tax imposed by this subchapter shall not be computed on the aggregate income but shall be the sum of the taxes computed under this subchapter on the separate self-employment income of each spouse.

(b) **Title of subchapter.** This subchapter may be cited as the "Self-Employment Contributions Act."

(c) **Effective date in case of Puerto Rico.** For effective date in case of Puerto Rico, see section 3810.

(d) **Collection of taxes in Virgin Islands and Puerto Rico.** For provisions relating to collection of taxes in Virgin Islands and Puerto Rico, see section 3811. Added Aug. 10, 1950, c. 809, Title II, § 203(a), 64 Stat. 540.

CHAPTER 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER A.—PERSONAL HOLDING COMPANIES

Sec.

- 500. Surtax on personal holding companies.
- 501. Definition of personal holding company.
- 502. Personal holding company income.
- 503. Stock ownership.
- 504. Undistributed subchapter A net income.
- 505. Subchapter A net income.
- 506. Deficiency dividends—credits and refunds.
- 507. Meaning of terms used.
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SUBCHAPTER B.—DECLARED VALUE EXCESS-PROFITS TAX

600—605. Repealed.

SUBCHAPTER C.—EXCESS PROFITS ON NAVY CONTRACTS

- 650. Method of collection.
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- 700. Tax on net income from certain sources.
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- 702. Administrative provisions.
- 703. Taxable years to which subchapter is applicable.
- 704. Application of subchapter to possessions.
- 705. Closing agreements.
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SUBCHAPTER E.—EXCESS PROFITS TAX

PART I

710—736. Repealed.

PART II—RULES IN CONNECTION WITH CERTAIN EXCHANGES

Supplement A—Excess Profits Credit Based on Income

740—744. Repealed.

Supplement B—Highest Bracket Amount and Invested Capital

750—752. Repealed.

Supplement C—Invested Capital in Connection with Certain Exchanges and Liquidations

760, 761. Repealed.

PART III—POST-WAR REFUND OF EXCESS PROFITS TAX

780—784. Repealed.

SUBCHAPTER A.—PERSONAL HOLDING COMPANIES

§ 500. Surtax on personal holding companies

There shall be levied, collected, and paid, for each taxable year beginning after December 31, 1938, upon the undistributed subchapter A net income of every personal holding company (in addition to the taxes imposed by chapter 1) a surtax equal to the sum of the following:

- (1) 75 per centum of the amount thereof not in excess of \$2,000; plus
- (2) 85 per centum of the amount thereof in excess of \$2,000. 53 Stat. 104, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 203, 54 Stat. 521; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 110(a), 55 Stat. 695; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 181, 56 Stat. 894.

Historical Note

1942 Amendment. Act Oct. 21, 1942, substituted "75 for 71½" in par. (1), and "85" for "82½" in par. (2).

1941 Amendment. Section was formerly composed of two subsections, designated "(a)" and "(b)". Act Sept. 20, 1941, struck out the heading "(a) General rule", increased the surtax rate from "65 per centum" to "71½ per centum" under par. (1) and from "75 per centum" to "82½ per centum" under par. (2) and repealed subsec. (b), which related to defense tax for five years.

1940 Amendment. Subsec. (a) was created from section as originally enacted and heading "(a) General Rule" was inserted by Act June 25, 1940.

Subsec. (b) added by Act June 25, 1940.

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, provided that the amendment of this section was made applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1941 Amendment. Section 118 of Act Sept. 20, 1941, provided that the amendment of this section was made applicable only with respect to taxable years beginning after Dec. 31, 1940.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186, of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1941—Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title I, § 108, 55 Stat. 695.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 501. Definition of personal holding company

(a) **General rule.** For the purposes of this subchapter and chapter 1, the term "personal holding company" means any corporation if—

(1) **Gross income requirement.** At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 502; but if the corporation is a personal holding company with respect to any taxable year beginning after December 31, 1936, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

(2) **Stock ownership requirement.** At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

(b) **Exceptions.** The term "personal holding company" does not include—

- (1) A corporation exempt from taxation under section 101.

(2) A bank as defined in section 104.

(3) A life insurance company.

(4) A surety company.

(5) A foreign personal holding company as defined in section 331.

(6) (A) A licensed personal finance company under State supervision, 80 per centum or more of the gross income of which is lawful interest received from loans made to individuals in accordance with the provisions of applicable State law if at least 60 per centum of such gross income is lawful interest (i) received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed in principal amount the limit prescribed for small loans by such law (or, if there is no such limit, \$500), and (ii) not payable in advance or compounded and computed only on unpaid balances, and if the loans to a person, who is a shareholder in such company during the taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 503 (a) (2)), outstanding at any time during such year do not exceed \$5,000 in principal amount; and

(B) A lending company, not otherwise excepted by section 501 (b), authorized to engage in the small loan business under one or more State statutes providing for the direct regulation of such business, 80 per centum or more of the gross income of which is lawful interest, discount or other authorized charges (i) received from loans maturing in not more than thirty-six months made to individuals in accordance with the provisions of applicable State law, and (ii) which do not, in the case of any individual loan, exceed in the aggregate an amount equal to simple interest at the rate of 3 per centum per month not payable in advance and computed only on unpaid balances, if at least 60 per centum of the gross income is lawful interest, discount or other authorized charges received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed in principal amount the limit prescribed for small loans by such law (or, if there is no such limit, \$500), and if the deductions allowed to such company under section 23 (a) (relating to expenses), other than for compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 503 (a) (2)) constitute 15 per centum or more of its gross income, and the loans to a person, who is a shareholder in such company during the taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 503 (a) (2)), outstanding at any time during such year do not exceed \$5,000 in principal amount.

(7) A loan or investment corporation, a substantial part of the business of which consists of receiving funds not subject to check and evidenced by installment or fully paid certificates of indebtedness or investment, and making loans and discounts, and the loans to a person who is a shareholder in such corporation during such taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 503 (a) (2)) outstanding at any time during such year do not exceed \$5,000 in principal amount.

(8) A finance company, actively and regularly engaged in the business of purchasing or discounting accounts or notes receivable or installment obligations, or making loans secured by any of the foregoing or by tangible personal property, at least 80 per centum of the gross income of which

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is derived from such business in accordance with the provisions of applicable State law or does not constitute personal holding company income as defined in section 502, if 60 per centum of the gross income is derived from one or more of the following classes of transactions:

(A) Purchasing or discounting accounts or notes receivable, or installment obligations evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements, arising out of the sale of goods or services in the course of the transferor's trade or business;

(B) Making loans, maturing in not more than thirty-six months, to, and for the business purposes of, persons engaged in trade or business, secured by—

(i) accounts or notes receivable, or installment obligations, described in subparagraph (a) above;

(ii) warehouse receipts, bills of lading, trust receipts, chattel mortgages, bailments, or factor's liens, covering or evidencing the borrower's inventories;

(iii) a chattel mortgage on property used in the borrower's trade or business;

except loans to any single borrower which for more than ninety days in the taxable year of the company exceed 15 per centum of the average funds employed by the company during such taxable year;

(C) Making loans, in accordance with the provisions of applicable State law, secured by chattel mortgages on tangible personal property, the original amount of each of which is not less than the limit referred to in, or prescribed by, subsection (b) (6) (A) (i), and the aggregate principal amount of which owing by any one borrower to the company at any time during the taxable year of the company does not exceed \$5,000; and

(D) If 30 per centum or more of the gross income of the company is derived from one or more of the classes of transactions described in subparagraphs (A), (B) and (C) of this paragraph, purchasing, discounting, or lending upon the security of, installment obligations of individuals where the transferor or borrower acquired such obligations either in transactions of the classes described in subparagraphs (A) and (C) of this paragraph or as a result of loans made by such transferor or borrower in accordance with the provisions of clauses (i) and (ii) of paragraph 6 (A) or of clauses (i) and (ii) of paragraph 6 (B) of this subsection, if the funds so supplied at all times bear an agreed ratio to the unpaid balance of the assigned installment obligations, and documents evidencing such obligations are held by the company;

provided that the deductions allowable under subsection 23 (a) (relating to expenses), other than compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 503 (a) (2)), constitute 15 per centum or more of the gross income, and that loans to a person who is a shareholder in such company during such taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 503 (a) (2)) outstanding at any time during such year do not exceed \$5,000 in principal amount.

(c) **Corporations making consolidated returns.** If the common parent corporation of an affiliated group of corporations making a consolidated return under the provisions of section 141 satisfies the stock ownership requirement provided in section 501(a) (2), and the income of such affiliated group, determined as provided in section 141, satisfies the gross income requirement provided in section 501(a) (1), such affiliated group shall be subject to the surtax imposed by this subchapter. The preceding sentence shall apply only if the common parent corporation is a common

parent of an affiliated group of railroad corporations which would be eligible to file consolidated returns under section 141 prior to its amendment by the Revenue Act of 1942. 53 Stat. 104, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 182(a), 183, 56 Stat. 894, 895; Aug. 9, 1950, c. 657, §§ 1, 2, 64 Stat. 428.

Historical Note

References in Text. Section 141 prior to its amendments by the Revenue Act of 1942, referred to in subsec. (c), refers to section 141 prior to its amendment on Oct. 21, 1942, 4:30 p. m., E.W.T., the date of enactment of the Revenue Act of 1942.

1950 Amendment. Subsec. (b) (6) amended by Act Aug. 9, 1950, § 1, to expand the definition of personal finance companies excluded from the provisions of the surtax of personal holding companies.

Subsec. (b) (8) added by Act Aug. 9, 1950, § 2, to exclude finance companies, actively and regularly engaged in the business of purchasing or discounting accounts or notes receivable, or installment obligation, or making loans secured by any of the foregoing or by tangible personal property.

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942.

Subsec. (c) amended by Act Oct. 21, 1942, which added second sentence.

Effective Date of 1942 Amendments. Amendment of subsec. (b) by Act Oct. 21, 1942, § 182(a), was made effective by section 182(b) thereof as follows: "The amendment made by this section shall be applicable to taxable years be-

ginning after December 31, 1941, except that if a taxpayer, within the time and in the manner and subject to such regulations as the Commissioner with the approval of the Secretary prescribes, elects to have such amendments apply retroactively to all taxable years of the taxpayer beginning after December 31, 1938, and not beginning after December 31, 1941, such amendments shall be applicable to such taxable years."

Amendment of subsec. (c) by Act Oct. 21, 1942, § 183, was made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 9, 1950, see 1950 U.S.Code Cong.Service, p. 2956.

§ 502. Personal holding company income

For the purposes of this subchapter the term "personal holding company income" means the portion of the gross income which consists of:

(a) Dividends, interest (other than interest constituting rent as defined in subsection (g)), royalties (other than mineral, oil, or gas royalties), annuities.

(b) Stock and securities transactions. Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) Commodities transactions. Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) Estates and trusts. Amounts includible in computing the net income of the corporation under Supplement E of chapter 1; and gains from the sale or other disposition of any interest in an estate or trust.

(e) Personal service contracts. (1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the

services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) **Use of corporation property by shareholder.** Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) **Rents.** Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but does not include amounts constituting personal holding company income under subsection (f).

(h) **Mineral, oil, or gas royalties.** Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of the gross income, and (2) the deductions allowable under section 23(a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income. 53 Stat. 105.

Historical Note

Certain rents excluded from provisions of subsection (f). Section 223 of Act Sept. 23, 1950, c. 994, Title II, § 4 Stat. 947, as amended by Act Aug. 11, 1955, c. 808, § 1, 69 Stat. 693, provided that: "Section 502(f) of the Internal Revenue Code [subsection (f) of this section] (relating to use of corporation property by a shareholder) shall not apply with respect to rents received during taxable years ending after December 31, 1945, and before January 1, 1954, if such rents were received for the use by the lessee, in the operation of a

bona fide commercial, industrial, or mining enterprise, of property of the taxpayer."

Interest on overpayments. Section 2 of Act Aug. 11, 1955, c. 808, 69 Stat. 693, provided that no interest should be allowed or paid on any overpayment resulting from the amendment to section 223 of Act Sept. 23, 1950 by section 1 of such Act Aug. 11, 1955, set out as a note under this section, which substituted "January 1, 1954" for "January 1, 1950".

§ 503. Stock ownership

(a) **Constructive ownership.** For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 501(a) (2), section 502(e), or section 502(f)—

(1) **Stock not owned by individual.** Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) **Family and partnership ownership.** An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) **Options.** If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) **Application of family-partnership and option rules.** Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 501(a) (2), if, but only if, the effect is to make the corporation a personal holding company;

(B) For the purposes of section 502(e) (relating to personal service contracts), or of section 502(f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as personal holding company income.

(5) **Constructive ownership as actual ownership.** Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) **Option rule in lieu of family and partnership rule.** If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) **Convertible securities.** Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 501(a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) For the purpose of section 502(e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income; and

(3) For the purpose of section 502(f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. 53 Stat. 106.

§ 504. Undistributed subchapter A net income

For the purposes of this subchapter the term "undistributed subchapter A net income" means the subchapter A net income (as defined in section 505) minus—

(a) The amount of the dividends paid credit provided in section 27(a) without the benefit of paragraphs (3) and (4) thereof (computed without its reduction, under section 27(b) (1), by the amount of the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations); but, in the computation of the dividends paid credit for the purposes of this subchapter, the amount allowed under subsection (c) of this section or of section 405 of the Revenue Act of 1938 in the computation of the tax under this sub-

chapter or under Title IA of the Revenue Act of 1938 for any preceding taxable year beginning after December 31, 1937 shall be considered as a dividend paid in such preceding taxable year and not in the year of distribution;

(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness;

(c) Dividends paid after the close of the taxable year and before the 15th day of the third month following the close of the taxable year, if claimed under this subsection in the return, but only to the extent to which such dividends would have been includible in the computation of the basic surtax credit for the taxable year if distributed during such taxable year; but the amount allowed under this subsection shall not exceed either:

(1) The undistributed Subchapter A net income for the taxable year computed without regard to this subsection; or

(2) 10 percentum of the sum of—

(A) The dividends paid during the taxable year (reduced by the amount allowed under this subsection in the computation of the tax under this subchapter for the taxable year preceding the taxable year or, in the case of a taxable year beginning in 1939, by the amount allowed under section 405(c) of the Revenue Act of 1938 in the computation of the tax under Title IA of such Act for a taxable year beginning prior to January 1, 1939); and

(B) The consent dividends credit for the taxable year.

(d) Amounts distributed before January 1, 1944, in redemption of preferred stock outstanding before January 1, 1934 (including any preferred stock issued after January 1, 1934, in lieu of such previously outstanding preferred stock) if such distributions are made by a corporation the aggregate of whose gross sales and gross receipts arising from manufacturing, commercial, processing, and service operations during the four-year period immediately before January 1, 1934, exceeded the aggregate of its gross receipts from dividends, interest, royalties, annuities, and gains from the sale or exchange of stock or securities during such period.

(e) The amount by which the undistributed subchapter A net income determined without reference to this subsection exceeds the amount which could be distributed on the last day of the taxable year as a dividend (1) without violating any action, regulation, rule, order, or proclamation taken, promulgated, made, or issued by, or pursuant to the direction of, the President or any agency that he may designate, under the Trading With the Enemy Act of October 16, 1917, as amended, or the First War Powers Act of 1941, and (2) not subject to a lien in favor of the United States. 53 Stat. 107, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 228, 53 Stat. 881; Mar. 17, 1941, c. 21, § 1, 55 Stat. 44; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 132(d), 184(a), 186(c), 56 Stat. 829, 895, 896; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, § 349, 65 Stat. 519.

Historical Note

References in Text. Trading with the Enemy Act of October 16, 1917, as amended, referred to in subsec. (e), is classified to sections 1-6 and 7-39 of Appendix to Title 50, War and National Defense.

The First War Powers Act of 1941, referred to in subsec. (e), is classified to section 601 et seq., of Appendix to Title 50, War and National Defense.

1951 Amendment. Subsec. (e) added by Act Oct. 20, 1951.

1942 Amendment. Subsecs. (a) and (c) (1, 2) amended and subsec. (d) added by Act Oct. 21, 1942.

1941 Amendments. Subsec. (a), amended by Joint Res. Mar. 17, 1941, which inserted "or of section 405 of the Rev-

Revenue Act of 1938" after "subsection (c) of this section", "or under Title IA of the Revenue Act of 1938" after "under this subchapter", and "beginning after December 31, 1937" after "any preceding taxable year."

Subsec. (b) amended by Joint Res. Mar. 17, 1941, which struck out the period at the end of the subsection and inserted in lieu thereof a semicolon.

Subsec. (c) (3) (A), amended by Joint Res. Mar. 17, 1941, which inserted before closing mark of parenthesis the following: "or, in the case of a taxable year beginning in 1939, by the amount added under section 405(c) of the Revenue Act of 1938 in the computation of taxable income under Title IA of such Act taxable year beginning prior to 1939."

Amendment. Subsec. (a) amended by Act June 29, 1939, which added in the computation of the dividend carry-over for the purposes of this section, the term "adjusted net income" as used in section 27(c) means the net income minus the deductions allowed for Federal taxes under section 505(a) (1)."

Effective Date of 1951 Amendment. Addition of subsec. (e) made effective for taxable years beginning after Dec. 31, 1939, by section 349 of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, § 132(d), was made effective by section 132(e) thereof as follows: "(e) The amendments made by this section [to sections 26(c) (1, 2), 27(b-c) and 504(a)] shall be applicable only with respect to taxable years beginning after December 31, 1939, but shall be applicable in the computations with respect to previous taxable years for the purpose of ascertaining the amount of any dividend carry-over from such previous taxable years."

Amendment of subsec. (c) (1, 2) by Act Oct. 21, 1942, § 136(c), was made effective by section 136(f, g) thereof as follows:

"(f) The amendments made by subsections (a) to (e), inclusive [to sections 28(d) (1), 115(a, b), 504(c) (1, 2) and 506(c) (1)], shall be effective as of the date of enactment of the laws amended thereby.

"(g) The amendments made by subsections (a) to (d), inclusive [to sections 115(a, b), 504(c) (1, 2) and 506(c) (1)] shall not apply with respect to any distribution, which is a dividend solely by reason of the last sentence of section 115(a) of the applicable revenue law, made prior to the date of enactment of this Act (Oct. 21, 1942, 4:30 p. m., E.W.T.) by a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which it is made under section 504(c) or section 506

[of I.R.C.1939] or a corresponding provision of a prior income tax law, is a personal holding company under the law applicable to such taxable year, unless—

"(1) The corporation (under regulations prescribed by the Commissioner with the approval of the Secretary) files, within one year after the date of the enactment of this Act, a claim for the benefit of this section on account of such distribution;

"(2) Such claim is accompanied by signed consents made under oath by each person to whom the corporation made such distribution agreeing to the inclusion of the amount of such distribution to him in his gross income as a taxable dividend. If any such person is no longer in existence or is under disability then the consent may be made by his legal representatives; and

"(3) Each such consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143(b) or 144 of the applicable revenue law to be deducted and withheld by the corporation if the amount of the distribution to the shareholder had been paid to the shareholder in cash as a dividend. The amount accompanying such consent shall be credited against the tax under the applicable revenue law imposed by section 211(a) or 231(a) [of I.R.C.1939] upon the shareholder"

Amendment by Act Oct. 21, 1942, § 184a, adding subsec. (d), was made applicable to taxable years beginning after Dec. 31, 1940, by section 184(b) thereof.

Effective Date of 1941 Amendment. Section 2 of Joint Res. Mar. 17, 1941 provided that this section as amended by said Joint Res. Mar. 17, 1941 should be effective as if enacted in I.R.C.1939 on Feb. 11, 1939.

Effective Date of 1939 Amendment. Section 228(b) of Act June 29, 1939 provided that the amendment of subsec. (a) was made applicable to taxable years beginning after Dec. 31, 1938.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 505. Subchapter A Net Income

For the purposes of this subchapter the term "Subchapter A Net Income" means the net income with the following adjustments:

(a) **Additional deductions.** There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 500, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts, payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section. For the purposes of the preceding sentence, payment of any contribution or gift shall be considered as made within the taxable year if and only if it is considered for the purposes of section 23(q) as made within such year. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g) (2).

(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23(o) for the purposes therein specified, to the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

(b) **Deductions not allowed.** The aggregate of the deductions allowed under section 23(a), relating to expenses, and section 23(l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(c) **Net loss carry-over disallowed.** The deduction for net operating losses provided in section 23(s) shall not be allowed.

(d) **1941 capital loss carry-over denied.** The net income shall be computed without regard to section 117(e) (2).

(e) **Income not placed on annual basis.** The net income shall be computed without regard to section 47(c). 53 Stat. 108, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, §§ 211(i), 212(d), 53 Stat. 869; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 135 (b) (4), 150(i), 56 Stat. 835, 846; Oct. 25, 1949, c. 720, § 3(b), 63 Stat. 892; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 332(d), 64 Stat. 959.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, which added "For disallowance of certain * * * 162(g) (2)."

1949 Amendment. Subsec. (a) (2) amended by Act Oct. 25, 1949, which added last sentence to integrate provisions of section relating to charitable contributions with new provisions of subsec. (q) of section 23 of I.R.C.1939. title.

1942 Amendment. Subsec. (d) amended and subsec. (e) added by Act Oct. 21, 1942.

1939 Amendment. Subsecs. (c), (d) added by Act June 29, 1939.

Effective date of 1949 Amendment. Section 3(c) of Act Oct. 25, 1949, provided that:

"The amendments made by this section [to sections 23(q), 102(d) (1) (B), 336(a) (2), 505(a) (2)] shall be applicable with respect to taxable years beginning after December 31, 1942. If the election provided for in such amendments is made for any taxable year beginning before January 1, 1949—

"(1) the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within one year after the date of the enactment of this Act [Oct. 25, 1949]; but

"(2) such election shall not be allowed unless the taxpayer, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, consents in writing to the assessment (within such period as may be

agreed upon) of any deficiency, to the extent resulting from such election, for any other taxable year of the taxpayer, even though on the date of the filing of such consent such assessment is otherwise prevented by the operation of any law or rule of law."

Effective Date of 1942 Amendment. Section 101 of Act Oct. 21, 1942, made amendment of this section applicable to taxable years beginning after Dec. 31, 1941.

Effective Date of 1939 Amendment. Amendment adding subsec. (d) made applicable only with respect to taxable years beginning after Dec. 31, 1939 by section 229 of Act June 29, 1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, cited to text, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 506. Deficiency dividends—credits and refunds

(a) **Credit against unpaid deficiency.** If the amount of a deficiency with respect to the tax imposed by this subchapter for any taxable year has been established—

- (1) by a decision of the Tax Court which has become final; or
- (2) by a closing agreement made under section 3760; or
- (3) by a final judgment in a suit to which the United States is a party;

then a deficiency dividend credit shall be allowed against the amount of the deficiency so established and all interest, additional amounts, and additions to the tax provided by law not paid on or before the date when claim for a deficiency dividend credit is filed under subsection (d). The amount of such credit shall be 65 per centum of the amount of deficiency dividends, as defined in subsection (c), not in excess of \$2,000, plus 75 per centum of the amount of such dividends in excess of \$2,000; but such credit shall not exceed the portion of the deficiency so established which is not paid on or before the date of the closing agreement, or the date the decision of the Tax Court or the judgment becomes final, as the case may be. Such credit shall be allowed as of the date the claim for deficiency dividend credit is filed.

(b) **Credit or refund of deficiency paid.** When the Commissioner has determined that there is a deficiency with respect to the tax imposed

by this subchapter and the corporation has paid any portion of such asserted deficiency and it has been established—

- (1) by a decision of the Tax Court which has become final; or
- (2) by a closing agreement made under section 3760; or
- (3) by a final judgment in a suit against the United States for refund—

(A) if such suit is brought within six months after the corporation became entitled to bring suit, and

(B) if claim for refund was filed within six months after the payment of such amount;

that any portion of the amount so paid was the whole or a part of a deficiency at the time when paid, then there shall be credited or refunded to the corporation an amount equal to 65 per centum of the amount of deficiency dividends not in excess of \$2,000, plus 75 per centum of the amount of such dividends in excess of \$2,000, but such credit or refund shall not exceed the portion so paid by the corporation. Such credit or refund shall be made as provided in section 322 but without regard to subsection (b) or subsection (c) thereof. No interest shall be allowed on such credit or refund. No credit or refund shall be made under this subsection with respect to any amount of tax paid after the date of the closing agreement, or the date the decision of the Tax Court or the judgment becomes final, as the case may be.

(c) Deficiency dividends

(1) **Definition.** For the purposes of this subchapter, the term "deficiency dividends" means the amount of the dividends paid, on or after the date of the closing agreement or on or after the date the decision of the Tax Court or the judgment becomes final, as the case may be, and prior to filing claim under subsection (d), which would have been includible in the computation of the basic surtax credit for the taxable year with respect to which the deficiency was asserted if distributed during such taxable year. No dividends shall be considered as deficiency dividends for the purposes of allowance of credit under subsection (a) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) the corporation files, within thirty days after the date of the closing agreement, or the date upon which the decision of the Tax Court or judgment becomes final, as the case may be, notification (which specifies the amount of the credit intended to be claimed) of its intention to have the dividends so considered.

(2) Effect on dividends paid credit.

(A) **For taxable year in which paid.** Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, of this section or section 407 of the Revenue Act of 1938, are allowed) shall be subtracted from the basic surtax credit for such year, but only for the purpose of computing the tax under this subchapter for such year and succeeding years.

(B) **For prior taxable year.** Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, of this section or section 407 of the Revenue Act of 1938, are allowed) shall not be allowed under section 504(c) in the computation of the tax under this subchapter for any taxable year preceding the taxable year in which paid.

(d) **Claim required.** No deficiency dividends credit shall be allowed under subsection (a) and no credit or refund shall be made under

subsection (b) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) claim therefor is filed within sixty days after the date of the closing agreement, or the date upon which the decision of the Tax Court or judgment becomes final, as the case may be.

(e) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute. If the corporation files a notification, as provided in subsection (c), to have dividends considered as deficiency dividends, the running of the statute of limitations provided in section 275 or 276 on the making of assessments and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, and additions to the tax provided by law, shall be suspended for a period of two years after the date of the filing of such notification.

(2) Stay of collection. In the case of any deficiency with respect to the tax imposed by this subchapter established as provided in subsection (a)—

(A) The collection of the deficiency and all interest, additional amounts, and additions to the tax provided for by law shall, except in cases of jeopardy, be stayed until the expiration of thirty days after the date of the closing agreement, or the date upon which the decision of the Tax Court or judgment becomes final, as the case may be.

(B) If notification has been filed, as provided in subsection (c), the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount which, in the notification, is specified as intended to be claimed as credit, shall, except in cases of jeopardy, be stayed until the expiration of sixty days after the date of the closing agreement, or the date upon which the decision of the Tax Court or judgment becomes final, as the case may be.

(C) If claim for deficiency dividend credit is filed under subsection (d), the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount claimed, shall be stayed until the date the claim for credit is disallowed (in whole or in part), and if disallowed in part collection shall be made only of the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A), (B), or (C) during the period for which the collection of such amount is stayed.

(f) Credit or refund denied if fraud, etc. No deficiency dividend credit shall be allowed under subsection (a) and no credit or refund shall be made under subsection (b) if the closing agreement, decision of the Tax Court, or judgment contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to failure to file the return under this subchapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure to file is due to reasonable cause and not due to willful neglect.

(g) Rate for taxable years 1939, 1940, and 1941. If the deficiency is established or determined for a taxable year which begins after December 31, 1939, and does not begin after December 31, 1941, the rates under subsections (a) and (b) used in determining the amount of the credit or refund shall be 71½ per centum in lieu of 65 per centum and 82½ per centum in lieu of 75 per centum.

(h) Rate for taxable years after 1941. If the deficiency is established or determined for a taxable year which begins after December 31, 1941, the rates under subsections (a) and (b) used in determining the

amount of the credit or refund shall be 75 per centum in lieu of 65 per centum and 85 per centum in lieu of 75 per centum.

(j) ¹ Additional credit or refund for prior taxable year.

(1) Election to have a certain dividend considered as a deficiency dividend. If a corporation was a personal holding company for any taxable year beginning after December 31, 1936, and prior to January 1, 1942, and its adjusted net income, Title 1A net income or Subchapter A net income, in the case of a tax imposed by Titles 1A of the Revenue Acts of 1936 and 1938, or Subchapter A of the Internal Revenue Code, as the case may be, exceeds the sum of (A) the earnings and profits accumulated after February 28, 1913, as of the beginning of the taxable year and (B) the earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year) and if prior to the date of enactment of the Revenue Act of 1942, the corporation paid all or any portion of the tax imposed by Title 1A or Subchapter A for any such taxable year or years then the corporation may elect, within six months after the date of enactment of the Revenue Act of 1942 to have the amount of a dividend paid within such six-month period considered as a deficiency dividend. Such election must be made by the filing of a claim (under regulations prescribed by the Commissioner with the approval of the Secretary) within such six-month period and after the payment of the dividend, specifying the taxable year or years with respect to which such dividend applies, setting forth the amount of the dividend to be apportioned to each taxable year, and claiming the benefit of this subsection by reason of such dividend.

(2) Effect of election. If the corporation exercises the election authorized under paragraph (1) of this subsection—

(A) The credit or refund shall be computed, and credited or refunded without interest, as provided in subsection (b) and at the rates provided therein or in subsection (g), as the case may be, but shall be subject to the limitations in subsection (f). In any case where a dividend is apportioned to more than one taxable year the credit or refund shall be determined for each taxable year on the basis of the amount of the dividend apportioned thereto; and

(B) The dividends paid credit for the taxable year in which paid and for a prior taxable year or years shall be determined as provided in subsection (c) (2). 53 Stat. 108, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 185, 186(d) (1), (i), Title V, § 504(a-c), 56 Stat. 895, 896, 898, 957.

¹ So in original. There is no subsection designated (i) in this section.

Historical Note

References in Text. Titles 1A of the Revenue Acts of 1936 and 1938, referred to in subsec. (j) (1), were Acts June 22, 1936, c. 690, Title 1A, § 351 et seq., 49 Stat. 1732; May 28, 1938, c. 289, Title 1A, § 401 et seq., 52 Stat. 557.

Date of enactment of Revenue Act of 1942, referred to in subsec. (j) (1), was Oct. 21, 1942, 4:30 p. m., E.W.T.

1942 Amendment. Subsec. (c) (1) amended and subsecs. (g, h, and j) added by Act Oct. 21, 1942, §§ 185, 186(d) (1), (i). Subsecs. (g, h, and j) added without using the letter (i).

1941 Amendment. Subsec. (c) (2) amended by Joint Res. March 17, 1941, which inserted "of this section or section

407 of the Revenue Act of 1938," after "or both," in par. (A), and "of this section or section 407 of the Revenue Act of 1938," after "or both" in par. (B).

Change of Name. Act Oct. 21, 1942, § 504(a), (c), 56 Stat. 957, changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections, see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1942 Amendment. Amendment of subsec. (c) (1) by Act Oct. 21, 1942, § 186(d) (i) was made effective by section 186(f) and (g) thereof as follows:

"(f) The amendments made by subsections (a) to (e), inclusive [to sec-

tions 28(d) (1), 115(a, b), 504(c) (1, 2) and 506(c) (1)], shall be effective as of the date of enactment of the laws amended thereby.

"(g) The amendments made by subsections (a) to (d), inclusive [to sections 115(a, b), 504(c) (1, 2) and 506(c) (1)], shall not apply with respect to any distribution, which is a dividend solely by reason of the last sentence of section 115(a) of the applicable revenue law, made prior to the date of enactment of this Act (Oct. 21, 1942, 4:30 p. m., E.W. T.) by a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which it is made under section 504(c) or section 506 [of I.R.C.1939] or a corresponding provision of a prior income tax law, is a personal holding company under the law applicable to such taxable year, unless—

"(1) The corporation (under regulations prescribed by the Commissioner with the approval of the Secretary) files, within one year after the date of the enactment of this Act, a claim for the benefit of this section on account of such distribution;

"(2) Such claim is accompanied by signed consents made under oath by each person to whom the corporation made such distribution agreeing to the inclusion of the amount of such distribution to him in his gross income as a taxable dividend. If any such person is no longer in existence or is under disability then the consent may be made by his legal representative; and

"(3) Each such consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143(b) or 144 of the applicable revenue law to be deducted and withheld by the corporation if the amount of the distribution to the shareholder had been paid to the shareholder in cash as a dividend. The amount accompanying such consent shall be credited against the tax under the applicable revenue law imposed by section 211(a) or 231(a) [of I.R.C.1939] upon the shareholder."

Subsecs. (g), (h), and (j) as added by Act Oct. 21, 1942, §§ 185 and 186 were made applicable to taxable years beginning after Dec. 31, 1941, by section 101 thereof.

Effective Date of 1941 Amendment. Amendments of subsec. (c) (2 A, B), by Joint Res. Mar. 17, 1941, § 1, were made effective as of Feb. 10, 1939 by section 2 of said Act.

Treaty Obligations. Section 109 of Act Oct. 21, 1942 provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 507. Meaning of terms used

(a) **General rule.** The terms used in this subchapter shall have the same meaning as when used in chapter 1.

(b) **Insurance companies other than life or mutual.** Notwithstanding subsection (a), the term "gross income", as used in this subchapter, means, in the case of an insurance company other than life or mutual, the gross income, as defined in section 204(b) (1), increased by the amount of losses incurred, as defined in section 204(b) (6), and the amount of expenses incurred, as defined in section 204(b) (7), and decreased by the amount deductible under section 204(c) (7) (relating to tax-free interest). 53 Stat. 111, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 227(a), 53 Stat. 881.

Historical Note

1939 Amendment. Subsec. (b) added by Act June 29, 1939.

Effective Date of 1939 Amendment. Section 227 of Act June 29, 1939, made amendment of section applicable to taxable years beginning after Dec. 31, 1938.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 508. Administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by chapter 1, shall insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter, except that the provisions of section 131 shall not be applicable. 53 Stat. 111.

§ 509. Improper accumulation of surplus

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

53 Stat. 111.

§ 510. Foreign personal holding companies

For provisions relating to foreign personal holding companies and their shareholders, see Supplement P of chapter 1.

53 Stat. 111.

§ 511. Publicity of returns

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55.

53 Stat. 111.

SUBCHAPTER B.—DECLARED VALUE EXCESS-PROFITS TAX**Historical Note**

Heading "Declared Value Excess-Profits Tax" was inserted in lieu of the former heading "Excess-Profits Tax" by Act Oct.

S. 1940, 11 p. m., E. S. T., c. 757, Title V, § 506(a), 54 Stat. 1008, eff. Feb. 10, 1939.

§§ 600–605. Repealed. Nov. 8, 1945, c. 453, Title II, § 202, 59 Stat. 574.

Historical Note

Effective Date of Repeal. Section 202 of Act Nov. 8, 1945, c. 453, Title II, 59 Stat. 574, provided that the repeal of sections 600–605 of I.R.C.1939 was effective with respect to income-tax taxable years ending after June 30, 1946.

Sections Prior to Repeal:**"§ 600. Rate of tax"**

"(a) In general. If any corporation is taxable under section 1200 with respect to any year ending June 30, there shall be imposed upon its net income for the income-tax taxable year ending after the close of such year, an [a] declared value excess-profits tax equal to the sum of the following:

"6¼ per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the declared value;

"13¼ per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the declared value.

"(b) Alternative tax. If the net income for the taxable year includes any amount on account of war loss recoveries under section 127(c), then, in lieu of the tax computed under subsection (a), the tax shall be a tax computed as follows:

"(1) An amount computed under subsection (a), after excluding from net income the amount of the war loss recoveries, plus

"(2) One and one-quarter per centum of the amount of the war loss recoveries included in the net income or of such portion of the net income as would be subject to the tax imposed by subsection (a) in the absence of this subsection, whichever is the lesser. 53 Stat. 111, amended June 25, 1940, 11:45 a. m.,

E. S. T., c. 419, Title II, § 204, 54 Stat. 521; Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 506(a), 54 Stat. 1008, eff. Feb. 10, 1939; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title III, § 302(a), 55 Stat. 704; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title III, § 302(a) (1), 56 Stat. 940; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title II, § 203, 59 Stat. 574."

"§ 601. Declared value"

"The declared value shall be determined as provided in section 1202 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). 53 Stat. 111, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title III, §§ 302(a) (2), 303(a), 56 Stat. 940."

"§ 602. Net income"

"For the purposes of this subchapter the net income shall be the same as the net income for income tax purposes for the year in respect of which the tax under section 600 is imposed, computed without the deduction of the tax imposed by section 600, but with a credit against net income equal to the credit for dividends received provided in section 26(b) of Chapter 1, and by excluding therefrom the excess of the net long-term capital gain over the net short-term capital loss. 53 Stat. 111, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title II, § 202(h), 55 Stat. 701; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title III, § 304, 56 Stat. 941; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 510(a), 58 Stat. 74."

"§ 603. Other laws applicable"

"All provisions of law (including penalties) applicable in respect of the taxes imposed by chapter 1, shall, insofar as

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not inconsistent with this subchapter, be applicable in respect of the tax imposed by section 600, except that the provisions of section 131 of that chapter shall not be applicable. 53 Stat. 111."

§ 604. Publicity of returns

"For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. 53 Stat. 111."

§ 605. Income-tax taxable year of less than twelve months

"(a) General rule. If the income-tax taxable year is a period of less than twelve months on account of a change in the accounting period of the taxpayer, the net income determined under section 602 for such income-tax taxable year (referred to in this section as the "short taxable year") shall be placed on an annual basis by multiplying the amount thereof by the number of days in the twelve months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. The tax shall be such part of the tax computed on such annual basis as the number of days in the short taxable year is of the number of days in the twelve months ending with the close of the short taxable year.

"(b) Exception. If the taxpayer establishes the amount of the tax under section 600 for the period of twelve months beginning with the first day of the short taxable year, computed as if such twelve-month period were an income-tax taxable year, under the law applicable to the short taxable year, and using the adjusted declared value applicable in determining the tax for such short taxable

year, then the tax determined under subsection (a) for the short taxable year shall be reduced to an amount which is such part of the tax computed for the twelve-month period as the net income for the short taxable year is of the net income established for such twelve-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this subsection. If, prior to one year from the date of the beginning of the short taxable year, the taxpayer has disposed of substantially all its assets, in lieu of the twelve-month period provided in the preceding provision of this subsection, the twelve-month period ending with the close of the short taxable year shall be used. For the purposes of this subsection, the net income for the short taxable year shall not be placed on an annual basis under the provisions of subsection (a), and the net income for the twelve-month period used shall in no case be considered less than the net income for the short taxable year. The benefits of this subsection shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require, makes application therefor in accordance with such regulations, and such application, in the case of a taxpayer required to file return without regard to this subsection, shall be considered a claim for credit or refund. The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary for the application of this subsection. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title III, § 303(b), 56 Stat. 940."

SUBCHAPTER C.—EXCESS PROFITS ON NAVY CONTRACTS

§ 650. Method of collection

If the amount of profit required to be paid into the Treasury under section 3 of the Act of March 27, 1934, c. 95, 48 Stat. 505, as amended by the Act of June 25, 1936, c. 812, 49 Stat. 1926 (U.S.C., Supp. III, Title 34, § 496), with respect to contracts completed within income-tax taxable years beginning after December 31, 1938, is not voluntarily paid, the Secretary shall collect the same under the usual methods employed under the internal revenue laws to collect federal income taxes. 53 Stat. 112.

§ 651. Laws applicable

All provisions of law (including penalties) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934, 48 Stat. 683, and not inconsistent with section 3 of said act of March 27, 1934, shall be applicable with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by section 650, and to refunds by the Treasury of overpayments of excess profits into the Treasury. 53 Stat. 112.

SUBCHAPTER D.—UNJUST ENRICHMENT

§ 700. Tax on net income from certain sources

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with respect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed.

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

(3) A tax equal to 80 per centum of the net income from refunds or credits to such person from the United States of Federal excise taxes erroneously or illegally collected with respect to any articles, to the extent that such net income does not exceed the amount of the burden of such Federal excise taxes with respect to such articles which such person shifted to others.

(b) The net income (specified in subsection (a) (1)) from the sale of articles with respect to which the Federal excise tax was not paid, and the net income specified in subsection (a) (2) or (3), shall not include the net income from the sale of any article, from reimbursement with respect to any article, or from refund or credit of Federal excise tax with respect to any article (1) if such article (or the articles processed therefrom) were not sold by the taxpayer on or before the date of the termination of the Federal excise tax; (2) if the taxpayer made a tax adjustment with respect to such article (or the articles processed therefrom) with his vendee; or (3) if under the terms of any statute the taxpayer would have been entitled to a refund from the United States of the Federal excise tax with respect to the article otherwise than as an erroneous or illegal collection (assuming, in case the tax was not paid, that it had been paid).

(c) The net income from the sales specified in subsection (a) (1) shall be computed as follows:

(1) From the gross income from such sales there shall be deducted the allocable portion of the deductions from gross income for the taxable year which are allowable under the applicable Revenue Act; or

(2) If the taxpayer so elects by filing his return on such basis, the total net income for the taxable year from the sale of all articles with respect to which each Federal excise tax was imposed (computed by deducting from the gross income from such sales the allocable portion of the deductions from gross income which are allowable under the applicable Revenue Act, but without deduction of the amount of such Federal excise tax which was paid or of the amount of reimbursement to purchasers with respect to such Federal excise tax) shall be divided by the total quantity of such articles sold during the taxable year and the quotient shall be multiplied by the quantity of such articles involved in the sales specified in subsection (a) (1). Such quantities shall be expressed in terms of the unit on the basis of which the Federal excise tax was imposed. For the purposes of this section the proper apportionment and allocation of deductions with respect to gross income shall be determined under rules

and regulations prescribed by the Commissioner with the approval of the Secretary.

(d) The net income from reimbursement or refunds specified in subsection (a) (2) or (3) shall be computed as follows: From the total payment or accrual (1) of reimbursement to the taxpayer from vendors for amounts representing Federal excise tax burdens included in prices paid by the taxpayer to such vendors or (2) of refunds or credits to the taxpayer of Federal excise taxes erroneously or illegally collected, there shall be deducted the expenses and fees reasonably incurred in obtaining such reimbursement or refunds.

(e) For the purposes of subsection (a) (1), (2), and (3), the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:

(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the Federal excise tax (or of the reimbursement specified in subsection (a) (2)) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under section 3400 for which the taxpayer under this section became liable as the result of the nonpayment or refund of the Federal excise tax with respect to the articles.

(f) As used in this section—

(1) The term "margin" means the difference between the selling price of articles and the cost thereof, and the term "average margin" means the average difference between the selling price and the cost of similar articles sold by the taxpayer during his six taxable years preceding the initial imposition of the Federal excise tax in question, except that if during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average margin of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average margin, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced.

(2) The term "cost" means, in the case of articles manufactured or produced by the taxpayer, the cost to the taxpayer of materials entering into the articles; or, in the case of articles purchased by the taxpayer for resale, the price paid by him for such articles (reduced in both cases by the amount for which he is reimbursed by his vendor).

(3) The term "selling price" means selling price minus (A) amounts subsequently paid or credited to the purchaser on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered

into on or before March 3, 1936, as reimbursement for the amount included in such price on account of a Federal excise tax; and minus (B) the allocable portion of any professional fees and expenses of litigation incurred in securing the refund or preventing the collection of the Federal excise tax, not to exceed 10 per centum of the amount of such tax.

(g) In determining costs, selling prices, and net income, the taxpayer shall, unless otherwise shown, be deemed to have sold articles in the order in which they were manufactured, produced, or acquired. Where the taxpayer's records do not adequately establish the quantity of a commodity taxable under the Agricultural Adjustment Act, 48 Stat. 31, as amended, entering into articles sold by him, such quantities shall be computed by the use of the conversion factors prescribed in regulations under such Act, as amended.

(h) If the taxpayer made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(i) Either the taxpayer or the Commissioner may rebut the presumption established by subsection (e) by proof of the actual extent to which the taxpayer shifted to others the burden of the Federal excise tax. Such proof may include, but shall not be limited to:

(1) Proof that the change or lack of change in the margin was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or materials, or (B) in costs of production. If the taxpayer asserts that the burden of the tax was borne by him while the burden of any other increased cost was shifted to others, the Commissioner shall determine, from the respective effective dates of the tax and of the other increase in cost as compared with the date of the change in margin, and from the general experience of the industry, whether the tax or the increase in other cost was shifted to others. If the Commissioner determines that the change in margin was due in part to the tax and in part to the increase in other cost, he shall apportion the change in margin between them.

(2) Proof that the taxpayer modified contracts of sale, or adopted a new contract of sale, to reflect the initiation, termination, or change in amount of the Federal excise tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the taxpayer may establish that such acts were caused by factors other than the tax, or that they do not represent his practice during the period in which the articles in question were sold.

(j) As used in this section—

(1) The term "Federal excise tax" means a tax or exaction with respect to the sale, lease, manufacture, production, processing, ginning, importation, transportation, refining, recovery, or holding for sale or other disposition, of commodities or articles, provided for by any Federal statute, whether valid or invalid, if denominated a "tax" by such statute. A Federal excise tax shall be deemed to have been imposed with respect to an article if it was imposed with respect to (or with respect to the processing of) any commodity or other article, from which such article was processed.

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(2) The term "date of the termination of the Federal excise tax" means, in the case of a Federal excise tax held invalid by a decision of the Supreme Court, the date of such decision.

(3) The term "refund or credit" does not include a refund or credit made in accordance with the provisions and limitations set forth in Title VII of the Revenue Act of 1936, 49 Stat. 1747, or in section 3443(d).

(4) The term "tax adjustment" means a repayment or credit by the taxpayer to his vendee of an amount equal to the Federal excise tax with respect to an article (less reasonable expense to the vendor in connection with the nonpayment or recovery by him of the amount of such tax and in connection with the making of such repayment or credit) if such repayment or credit is made on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936.

(5) The term "taxpayer" means a person subject to a tax imposed by this section.

(k) All references in this section to the purchase or sale (or to parties to the sale) of articles with respect to which a Federal excise tax was imposed shall be deemed to include the purchase or sale (or parties to the sale) of services with respect to which a Federal excise tax was imposed, and for the purposes of subsection (a) the extent to which the taxpayer shifted to others the burden of such Federal excise tax with respect to such services shall be presumed to be an amount computed as follows: From the selling price of the services there shall be deducted the average price received by the taxpayer for performing similar services during the six taxable years preceding the initial imposition of the Federal excise tax in question. The balance (to the extent that it does not exceed the amount of such Federal excise tax with respect to such services minus any payments or credits with respect to the services made to purchasers as specified in subsection (f) (3)) shall be the extent to which the taxpayer shifted the burden of such Federal excise tax to others. If during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average price of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average price, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced. The presumption established by this subsection may be rebutted by proof of the character described in subsection (i).

(l) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income-tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection. 53 Stat. 112.

§ 701. Credit for other taxes on income

There shall be credited against the total amount of the taxes imposed by this subchapter an amount equivalent to the excess of—

(a) The amount of the other Federal income and excess-profits taxes payable by the taxpayer for the taxable year, over

(b) The amount of the other Federal income and excess-profits taxes which would have been payable by the taxpayer for the taxable year if his net income were decreased by the amount of net income taxable under this subchapter. 53 Stat. 116.

§ 702. Administrative provisions

(a) All provisions of law (including penalties) applicable with respect to taxes imposed by chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable with respect to the taxes imposed by this subchapter, except that the provisions of sections 101, 131, 251, and 252 shall not be applicable.

(b) Every person (1) upon whom a Federal excise tax was imposed but not paid, or (2) who received any reimbursement specified in section 700(a) (2), or (3) who received a refund or credit of Federal excise tax, shall make a return under this subchapter, which return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, shall prescribe.

(c) If the Commissioner finds that the payment, on the date prescribed for the payment thereof, of any part of the amount determined by the taxpayer as the tax under this subchapter, or of any deficiency with respect thereto, would impose undue hardship upon the taxpayer, the Commissioner may grant an extension for the payment of any such part for a period not in excess of three years. In such case the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension. There shall be collected, as a part of any amount with respect to which an extension is granted, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date thereof to the expiration of the period of the extension. 53 Stat. 116.

§ 703. Taxable years to which subchapter is applicable

The taxes imposed by this subchapter shall apply only with respect to taxable years ending during the calendar year 1939 and to subsequent taxable years. 53 Stat. 117.

§ 704. Application of subchapter to possessions

With respect to the following income, the tax under this subchapter shall be in force in any possession of the United States (including the Philippine Islands); such tax shall (without regard to the residence or citizenship or place of organization of the taxpayer) be collected by the appropriate internal-revenue officers of such possession; and the proceeds thereof shall accrue to the general government of such possession: (a) Any income specified in subsection (a) (1) or (3) of section 700 if the Federal excise tax with respect to the articles in question accrued in such possession; and (b) any income specified in subsection (a) (2) of section 700 if the reimbursement specified therein relates to articles sold in such possession by the taxpayer under this subchapter and if the geographical scope of the Federal excise tax in question extended to such possession. Income taxable as provided in this section shall not be otherwise taxable under this subchapter. In applying section 700 to such income, the gross income and deductions shall be determined in accordance with the Federal Revenue Act applicable to the taxable year. In applying section 701 to such income, income taxes paid to such possession shall be deemed to be Federal income taxes. 53 Stat. 117.

Historical Note

Philippine Independence. The independence of the Philippine Islands was recognized and American Sovereignty withdrawn by 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352,

issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and set out as a note under that section.

§ 705. Closing agreements

Any person who is liable for the tax imposed by this subchapter and who has filed any claim or claims for refund of any amount paid or collected as tax under the Agricultural Adjustment Act, 48 Stat. 31, as amended, may apply to the Commissioner for an adjustment of such liability for tax in conjunction with such claim or claims for refund, and thereafter, the Commissioner, for such purposes, may, in his discretion, consider such liability and such claim or claims as one case and, in his discretion, may enter into a written agreement with such person for the settlement of such case by such payment by, or refund to, such person as may be specified in such agreement. Such agreement shall be a final settlement of the liability for tax and the claim or claims for refund covered by such agreement, except in case of fraud, malfeasance, or misrepresentation of a material fact. In the absence of fraud or mistake in mathematical calculation, any action taken or any consideration given by the Commissioner pursuant to this section shall not be subject to review by any court, or any administrative, or accounting officer, employee, or agent of the United States. 53 Stat. 117.

§ 706. Publicity of returns

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. 53 Stat. 117.

SUBCHAPTER E—EXCESS PROFITS TAX

PART I.—INTRODUCTORY PROVISIONS

Historical Note

Subchapter E added to Internal Revenue Code by Act Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 975.

§§ 710–736. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Historical Note

Section 710, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 975, amended Mar. 7, 1941, c. 10, § 2, 55 Stat. 17; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, §§ 201(a), 202(e), 55 Stat. 699, 701; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 202, 203(a), 204(a, b), 205(a), (g) (1), 222(b), 229(a) (2), 56 Stat. 899, 900, 901, 902, 917, 931; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, §§ 202(a), (b), 203(a), (b), 204(a), 53 Stat. 53, 54; July 31, 1945, c. 340, § 2(a), 59 Stat. 517; Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title I, §§ 122(c), 131(b), 59 Stat. 569, 571; June 12, 1948, c. 459, § 3(a), 62 Stat. 388, related to imposition of tax.

Section 711, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 976, amended Mar. 7, 1941, c. 10, § 3, 12 (b), 55 Stat. 18, 29; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 202(c), (d),

55 Stat. 700, 701; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 205(b, c), 206 (a), 207(a–g), 208, 209(a, b), 210(a, b), 211 (a), 213(a), 56 Stat. 902, 904, 907, 908; Oct. 26, 1943, c. 279, §§ 2, 3, 57 Stat. 576; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 208(d), (e), 58 Stat. 57, related to excess profits net income.

Section 712, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 979, amended Mar. 7, 1941, c. 10, § 13, 55 Stat. 29; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 212(a), 224(b), 228(e) (1), 56 Stat. 908, 920, 931, related to excess-profits credit allowance.

Section 713, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 981, amended Mar. 7, 1941, c. 10, § 4(a)—(c), 55 Stat. 19–21; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 214(a), 215, 216, 228(e) (2), 56 Stat. 909, 910, 931.

related to excess profits credit based on income.

Section 714, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 981, amended Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 201(b), 55 Stat. 699; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 217, 56 Stat. 911; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 205, 58 Stat. 55, related to excess profits credit based on invested capital.

Sections 715-717, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 982, related to definition of invested capital, average invested capital and daily invested capital.

Section 718, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 982, amended Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 202(f), 203, 55 Stat. 701, 702; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 205(d), 218, 219 (a-c), 230(b) (1), 56 Stat. 902, 911, 912, 936; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title I, § 121(d) (6), 58 Stat. 43, related to equity invested capital.

Section 719, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 984, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 205(e), 230(b) (2), 56 Stat. 902, 936, related to borrowed invested capital.

Section 720, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 985, amended Mar. 7, 1941, c. 10, § 12(a), 55 Stat. 29; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 207(h), 220, 56 Stat. 904, 912, related to admissible and inadmissible assets.

Section 721, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 986, amended Mar. 7, 1941, c. 10, § 5, 55 Stat. 21; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 221(a), 56 Stat. 912, related to abnormalities in income in taxable period.

Section 722, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 986, amended Mar. 7, 1941, c. 10, § 6, 55 Stat. 23; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 202(g), 55 Stat. 701; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 222(a), 56 Stat. 914; Mar. 31, 1943, c. 31, § 1, 57 Stat. 56; Dec. 17, 1943, c. 346, § 1(a), 57 Stat. 601; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 206(a), 58 Stat. 55, related to general relief-constructive average base period net income.

Section 723, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 986, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 205(f), 56 Stat. 902, related to equity invested capital in special cases.

Section 724, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 987, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 212(a), 56 Stat. 908, related to foreign corporations and corporations entitled to benefits of section 251—invested capital.

Section 725, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 987, amended Oct. 21, 1942, 4:30 p. m., E.W.T.,

c. 619, Title II, § 223(b), 56 Stat. 920, related to personal service corporations.

Section 726, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 988, related to corporations completing contracts under Merchant Marine Act, 1936.

Section 727, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 988, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 212(b), 223(a), (c), 56 Stat. 908, 920; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 209(a), 58 Stat. 58, related to exempt corporations.

Section 728, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 989, related to meaning of terms used.

Section 729, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 989, amended Mar. 7, 1941, c. 10, § 16, 55 Stat. 30; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, §§ 205(g) (2), 224(a), 225(b), 56 Stat. 902, 920; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 204(b), 58 Stat. 54; July 31, 1945, c. 340, § 2(b), 59 Stat. 518, related to laws applicable.

Section 730, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 989, amended Mar. 7, 1941, c. 10, § 7, 55 Stat. 25, eff. Oct. 8, 1940, 11 p. m., E.S.T.; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 225(a), 56 Stat. 920, related to consolidated returns.

Section 731, added Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 226(a), 56 Stat. 920, amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 207(a), 58 Stat. 55, related to corporations engaged in mining of strategic minerals.

Section 732, added Mar. 7, 1941, c. 10, § 9, 55 Stat. 26, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 222(c), Title V, 504(a), (c), 56 Stat. 917, 957; June 30, 1945, c. 211, § 2, 59 Stat. 295; Dec. 29, 1945, c. 652, Title II, § 203(a), 59 Stat. 673, related to review of abnormalities by the Tax Court of the United States.

Section 733, added Mar. 7, 1941, c. 10, § 10(a), 55 Stat. 26, eff. Oct. 8, 1940, 11 p. m., E.S.T., related to capitalization of advertising, etc., expenditures.

Section 734, added Mar. 7, 1941, c. 10, § 11, 55 Stat. 27, amended Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 227(a), 56 Stat. 921, related to adjustment in case of position inconsistent with prior income tax liability.

Section 735, added Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 209(c), 56 Stat. 905, amended Oct. 26, 1943, c. 279, § 1, 57 Stat. 575; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title II, § 208 (a-c), 58 Stat. 55-57, related to nontaxable income from certain mining and timber operations and from natural gas properties.

Section 736, added Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 222(d), 56 Stat. 917, related to relief for installment basis taxpayers and taxpayers with income from long-term contracts.

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of sections 710-736 of I.R.C.1939 shall not apply to any taxable year beginning after Dec. 31, 1945.

Text of Revenue Acts. Complete original text of Revenue Acts and amendments thereto classified to sections 710-784, see *Special Excess Profits Tax Volume* and volumes "Title 26—Internal Revenue Acts".

PART II.—RULES IN CONNECTION WITH CERTAIN EXCHANGES

Supplement A—Excess Profits Credit Based on Income

§ 740. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Historical Note

Section, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 991, amended Mar. 7, 1941, c. 10, § 8(a)-(c), 55 Stat. 25; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title II, § 228(a), 56 Stat. 923, related to definitions.

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of this section shall not apply to any taxable year beginning after Dec. 31, 1945.

§ 741. Repealed. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, §§ 224(b), 228(b), 56 Stat. 920, 925.

Historical Note

Section, added Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title II, § 201, 54 Stat. 992, amended Mar. 7, 1941, c. 10, § 14, 55 Stat. 30, eff. Oct. 8, 1940, 11 p. m., E.S.T., related to allowance of excess profits credit.

Effective Date of Repeal. Subsec. (a) was repealed by Act Oct. 21, 1942, § 228 (b). Section 228(f) of Act Oct. 21, 1942, provided as follows: "(f) The amendments made by this section [to former sections 712(d), 713(a) (1) (A), 740, 741(a), 742, 743] shall be applicable only to the computation of the tax for taxable years beginning after December 31, 1941, except that (1) the last sentence of section 740(c), as added by subsection (a) of this section shall be applicable to the computation of the tax for all taxable years beginning after December 31, 1939, and (2)

if a taxpayer, within the time and in the manner and subject to such regulations as the Commissioner with the approval of the Secretary prescribes, elects to have such amendments (except those which by their terms are limited to taxable years beginning after December 31, 1941, and except that referred to in clause (1)) apply retroactively to all taxable years of the taxpayer beginning after December 31, 1939, such amendments shall also be applicable to the computation of the tax for taxable years beginning after December 31, 1939."

Subsec. (b) was repealed by Act Oct. 21, 1942, § 224(b), and such repeal made applicable with respect to taxable years beginning after Dec. 31, 1939, by section 224(c) thereof.

§§ 742-744. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Historical Note

Section 742, added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title II, § 201, 54 Stat. 992, amended Mar. 7, 1941, c. 10, §§ 8(d), 15, 55 Stat. 25, 30; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, § 228(c), 56 Stat. 925, related to Supplement A average base period net income.

Section 743, added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title II, § 201, 54 Stat. 994, amended Mar. 7, 1941, c. 10, § 4(d), 55 Stat. 21; Oct. 21, 1942, 4:30 p. m., E. W.

T., c. 619, Title II, § 228(d), 56 Stat. 930, related to net capital changes.

Section 744, added Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title II, § 201, 54 Stat. 994, related to foreign corporations.

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of sections 742-744 of I.R.C.1939 shall not apply to any taxable year beginning after Dec. 31, 1945.

Supplement B—Highest Bracket Amount and Invested Capital

§§ 750, 751. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Historical Note

Sections, added Oct. 8, 1940, 11 p m., E S T., c 757, Title II, § 201, 54 Stat. 994, 995, related to definitions and determination of property paid in for stock and of borrowed capital in connection with certain exchanges

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of sections 750, 751 of I.R.C.1939 shall not apply to any taxable year beginning after Dec. 31, 1945

§ 752. Repealed. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, § 229(a) (1), 56 Stat. 931, eff. as of Oct. 8, 1940.

Historical Note

Section, added Oct. 8, 1940, 11 p m., E. S. T., c. 757, Title II, § 201, 54 Stat. 995, related to computation of highest bracket amount in connection with exchanges.

Supplement C—Invested Capital in Connection with Certain Exchanges and Liquidations

Historical Note

Supplement C added by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, § 230(a), 56 Stat. 932, and made applicable

to taxable years beginning after Dec. 31, 1941, by section 201 thereof.

§§ 760, 761. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Historical Note

Sections, added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title II, § 230(a), 56 Stat. 932, related to exchanges and invested capital adjustment at the time of taxfree intercorporate liquidation.

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of sections 760, 761 of I.R.C.1939 shall not apply to any taxable year beginning after Dec. 31, 1945.

PART III.—POST-WAR REFUND OF EXCESS PROFITS TAX

Historical Note

Part III added by Act Oct. 21, 1942, 4 30 p. m., E W. T., c 619, Title II, § 250, 56 Stat. 936, and made applicable to

taxable years beginning after Dec. 31, 1941, by section 201 thereof.

§§ 780-784. Repealed. Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

Section 780, added Oct. 21, 1942, 4:30 p m., E W. T., c. 619, Title II, § 250, 56 Stat. 936, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title II, § 250(e, f), 58 Stat. 59; July 31, 1945, c. 340, § 3(d-f), 59 Stat. 518, related to post-war refund of excess profits tax.

Section 781, added Oct. 21, 1942, 4.30 p.m., E. W. T., c. 619, Title II, § 250, 56 Stat. 936, amended Feb. 25, 1944, 12:49 p. m., E W. T., c. 63, Title II, § 250(e, f), 58 Stat 59; July 31, 1945, c. 340, § 3(d-f), 59 Stat. 518, related to special rules for application of section 780.

Section 782, added Oct. 21, 1942, 4 30 p. m., E. W. T., c. 619, Title II, § 250, 56 Stat. 938, related to regulations.

Section 783, added Oct. 21, 1942, 4:30 p. m., E W. T., c. 619, Title II, § 250, 56 Stat. 938, amended Feb 25, 1944, 12:49 p. m., E W. T., c 63, Title II, § 251(a), 58 Stat 60; July 31, 1945, c. 340, § 3(g), 59 Stat 519, related to credit for debt retirement.

Section 784, added July 31, 1945, c. 340, § 3(h), 59 Stat. 519, related to ten per centum credit against excess profits tax.

Effective Date of Repeal. Section 122 (a) of Act Nov. 8, 1945, c. 453, Title I, 59 Stat. 568, provided that the provisions of sections 780-784 of I.R.C.1939 shall not apply to any taxable year beginning after Dec. 31, 1945.

CHAPTER 3.—ESTATE TAX

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SUBCHAPTER A.—BASIC ESTATE TAX

PART I.—INTRODUCTORY PROVISIONS

§ 800. Application of subchapter

The provisions of this subchapter shall apply only to estates of decedents dying after the date of the enactment of this title. Estate taxes in the case of decedents dying on or prior to the date of the enactment of this title shall not be affected by the provisions of this subchapter, but shall remain subject to the applicable provisions of the Revenue Act of 1926 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1926. 53 Stat. 119.

Historical Note

Text of Revenue Acts. Complete original text of Revenue Acts 1924 to date, see volumes "Title 26—Internal Revenue Acts".

§ 801. Classification of provisions

The provisions of this subchapter are herein classified and designated as—

Part I—Introductory provisions.

Part II—Citizens or residents of the United States.

Part III—Nonresidents not citizens of the United States.

Part IV—Supplemental provisions.

53 Stat. 119.

§ 802. Application of parts

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. Part IV shall apply to the estates both of citizens or residents of the United States and nonresidents not citizens of the United States. 53 Stat. 119.

PART II.—ESTATES OF CITIZENS OR RESIDENTS OF THE UNITED STATES

Subpart I.—Computation of Tax

§ 810. Rate of tax

A tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 812) shall be imposed upon the transfer of the net estate of every decedent, citizen or resident of the United States, dying after the date of the enactment of this title.

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,-000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,-000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,-000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,-000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,-000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,-000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,-000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,-000. 53 Stat. 120.

§ 811. Gross estate

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) **Decedent's interest.** To the extent of the interest therein of the decedent at the time of his death;

(b) **Dower or curtesy interests.** To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) **Transfers in contemplation of, or taking effect at, death**

(1) **General rule.** To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

(A) in contemplation of his death; or

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

(C) intended to take effect in possession or enjoyment at or after his death.

Subparagraph (B) shall not apply to a transfer made before March 4, 1931; nor shall subparagraph (B) apply to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

(2) **Transfers taking effect at death—transfers prior to October 8, 1949.** An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1) (C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of

such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term 'reversionary interest' includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

(3) **Transfers taking effect at death—transfers after October 7, 1949.** An interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate under paragraph (1) (C) of this subsection (whether or not the decedent retained any right or interest in the property transferred) if and only if—

(A) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent; or

(B) under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (i) the decedent's death or (ii) some other event; and such other event did not in fact occur during the decedent's life.

Notwithstanding the foregoing sentence, an interest so transferred shall not be included in the decedent's gross estate under paragraph (1) (C) of this subsection if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a power of appointment (as defined in section 811(f) (2)) which in fact was exercisable immediately prior to the decedent's death.

(d) **Revocable transfers**

(1) **Transfers after June 22, 1936.** To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death;

(2) **Transfers on or prior to June 22, 1936.** To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

(3) **Date of existence of power.** For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the

date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(4) **Effect of disability in certain cases.** For the purposes of this subsection, in the case of a decedent who was (for a continuous period beginning not less than three months before December 31, 1947, and ending with his death) under a mental disability to relinquish a power, the term "power" shall not include a power the relinquishment of which on or after January 1, 1940, and on or before December 31, 1947, would, by reason of section 1000 (e), be deemed not to be a transfer of property for the purposes of chapter 4.

(5) **Repealed.** Apr. 2, 1948, c. 168, Title III, § 351(a), 62 Stat. 116.

(e) Joint interests

(1) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

(2) **Repealed.** Apr. 2, 1948, c. 168, Title III, § 351(a), 62 Stat. 116.

(f) Powers of Appointment

(1) Property with respect to which decedent exercises a general power of appointment created on or before October 21, 1942. To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent (1) by will or (2) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under subsection (c) or (d); but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

If before November 1, 1951, or within the time limited by paragraph (2) of section 403(d) of the Revenue Act of 1942, as amended, in cases to which such paragraph is applicable, a general power of appointment created on or before October 21, 1942, shall have been partially released so that it is no longer a general power of appointment, the subsequent ex-

ercise of such power shall not be deemed to be the exercise of a general power of appointment.

(2) Powers created after October 21, 1942. To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under subsection (c) or (d). A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.

For the purposes of this paragraph (2) the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Definition of general power of appointment. For the purposes of this subsection the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) if the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) if (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For the purposes of clauses (ii) and (iii) a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(4) Creation of another power in certain cases. To the extent of any property with respect to which the decedent (1) by will or (2) by a dis-

position which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under subsection (c), exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(5) **Lapse of power.** The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by the exercise of such lapsed powers exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) \$5,000, or

(B) 5 per centum of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(g) **Proceeds of life insurance**

(1) **Receivable by the executor.** To the extent of the amount receivable by the executor as insurance under policies upon the life of the decedent.

(2) **Receivable by other beneficiaries.** To the extent of the amount receivable by all other beneficiaries as insurance under policies upon the life of the decedent (A) purchased with premiums, or other consideration, paid directly or indirectly by the decedent, in proportion that the amount so paid by the decedent bears to the total premiums paid for the insurance, or (B) with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For the purposes of clause (A) of this paragraph, if the decedent transferred, by assignment or otherwise, a policy of insurance, the amount paid directly or indirectly by the decedent shall be reduced by an amount which bears the same ratio to the amount paid directly or indirectly by the decedent as the consideration in money or money's worth received by the decedent for the transfer bears to the value of the policy at the time of the transfer. For the purposes of clause (B) of this paragraph, the term "incident of ownership" does not include a reversionary interest.

(3) **Transfer not a gift.** The amount receivable under a policy of insurance transferred, by assignment or otherwise, by the decedent shall not be includible under paragraph (2) (A) if the transfer did not constitute a gift, in whole or in part, under Chapter 4, or, in case the transfer was made at a time when Chapter 4 was not in effect, would not have constituted a gift, in whole or in part, under such chapter had it been in effect at such time.

(4) **Repealed.** Apr. 2, 1948, c. 168, Title III, § 351(a), 62 Stat. 116.

(h) **Prior interests.** Except as otherwise specifically provided therein, subsections (b), (c), (d), (e), (f), and (g) shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after February 26, 1926.

(i) **Transfers for insufficient consideration.** If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a

consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(j) **Optional valuation.** If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subsection (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this subchapter of any item shall be allowed if allowance for such item is in effect given by the valuation under this subsection. Wherever in any other subsection or section of this chapter, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subsection, then—

(A) for the purposes of the deduction under section 812(d) or section 861(a) (3), any bequest, legacy, devise, or transfer enumerated therein, and

(B) for the purposes of the deduction under section 812(e), any interest in property passing to the surviving spouse, shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such one-year period, the date thereof).

(k) **Valuation of unlisted stock and securities.** In the case of stock and securities of a corporation the value of which by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(l) **Contemplation of death.** If the decedent within a period of three years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of subsections (c), (d), and (f); but no such transfer, relinquishment, exercise, or release made prior to such three-year period shall be deemed or held to have been made in contemplation of death.

(m) Cross reference

For provision that relinquishment of material estates shall not be deemed a consideration "in money or money's worth," see section 812(b). 53 Stat. 120, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, §§ 402(a, b), 403(a), 404(a), 56 Stat. 941, 942, 944; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 501, 58 Stat. 71; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, §§ 351(a, b), 364(a), 62 Stat. 116, 123; Oct. 25, 1949, c. 720, § 7(a), 63 Stat. 894; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title V, § 501(a), (b), 64 Stat. 962; June 28, 1951, c. 165, § 2(a), 65 Stat. 91; Aug. 15, 1953, c. 512, Title II, §§ 207(a), 208(a), 67 Stat. 623.

Historical Note

References in Text. Joint Resolution of March 3, 1931 (46 Stat. 1516), referred to in text, amended section 302(c) of the Revenue Act of 1926. Said Joint Res. Mar. 3, 1931, c. 454, 46 Stat. 1516, provided that certain transfers in contemplation of death in which the decedent retained the income interests for life were to be included in the decedent's gross estate for estate tax purposes.

1953 Amendment. Subsec. (c) (1) amended by Act Aug. 15, 1953, § 207(a), which exempted from application of subpar. (B) transfers of property with retention of the income for life by the transferor made prior to March 4, 1931 and in some cases, affected by Joint Res. Mar. 3, 1931, prior to June 7, 1932.

Subsec. (d) amended by Act Aug. 15, 1953, § 208(a), which added par. (4).

1951 Amendment. Subsec. (f) amended generally by Act June 28, 1951, to restore the law regarding preexisting powers of appointment as it was prior to the amendment of subsec. by Act Oct. 21, 1942; to provide that if a general power of appointment is partially released before Nov. 1, 1951, so that it is no longer a general power, a subsequent exercise of such power shall not be deemed the exercise of a general power; to deal with future powers created after enactment of said Act Oct. 21, 1942; to redefine a general power of appointment; to provide for successive powers of appointment; and to provide for the failure to exercise a power.

1950 Amendment. Subsec. (c) (1) (A) amended by Act Sept. 23, 1950, § 501(b) (1), which substituted "(A) in contemplation of his death, or" in lieu of "(A) in contemplation of his death, any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without consideration, shall unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter; or".

Subsec. (d) (4) relating to relinquishment of power in contemplation of death repealed by Act Sept. 23, 1950, § 501(b) (2).

Subsec. (i) added by Act Sept. 23, 1950, § 501(a).

Subsec. (m), formerly subsec. (i), relettered by Act Sept. 23, 1950, § 501(a).

1949 Amendment. Subsec. (c) amended by Act Oct. 25, 1949, to provide that property transferred before Mar. 4, 1931, shall not be included in the transferor's gross estate by reason of the fact that he retained a life estate in the transferred property.

1948 Amendment. Subsec. (d) (5) relating to transfers of community property in contemplation of death, etc. repealed by Act Apr. 2, 1948, § 351(a).

Subsec. (e) amended by Act Apr. 2, 1948, § 351(a), (b), which repealed subpar. (2) relating to community interests, struck out of subsec. catch line words "and community interests", and struck out subpar. (1) catch line "Joint interests".

Subsec. (g) (4) relating to community interests repealed by Act Apr. 2, 1948, § 351(a).

Subsec. (j), last sentence, amended by Act Apr. 2, 1948, § 364(a), which extends to the valuation of an interest in property for which a marital deduction is allowed substantially the same rule as is applicable under existing law in determining under the optional valuation method the value of any charitable bequest for which a deduction is allowed under section 812(d) of I.R.C.1939.

1944 Amendment. Subsec. (k) amended by Act Feb. 25, 1944, which struck out "(k)" and inserted "(i)" and inserted new subsec. (k).

1942 Amendment. Subsecs. (e) (1), (f) (1), and (g) (1) amended and subsecs. (d) (5), (e) (2), (f) (2, 3) and (g) (2-4) added by Act Oct. 21, 1942.

Effective Date of 1953 Amendment. Section 207(d) of Act Aug. 15, 1953 provided in part that the amendment to subsec. (c) (1) should apply only with respect to estates of decedents dying after February 10, 1939.

Section 208(b) of Act Aug. 15, 1953 provided that the amendment to subsec. (d) should apply only with respect to estates of decedents dying after December 31, 1950.

Effective Date of 1951 Amendment. The amendment of subsec. (f) by section

2(a) of Act June 23, 1951 is made effective as if made by section 403 of Act Oct. 21, 1942, on Oct. 21, 1942 (applicable with respect to estates of decedents dying after Oct. 21, 1942), by section 2(c) of said Act June 23, 1951.

Effective Date of 1950 Amendments. Section 501(c) of Act Sept. 23, 1950, provided that the amendments of subssecs (c) (1) (A), (d) (4), (f), and (m), of this section should be applicable with respect to estates of decedents dying after Sept. 23, 1950.

Effective Date of 1949 Amendment. Section 7(b) of Act Oct. 25, 1949, as amended by Act Oct. 20, 1951, 2.07 p. m., E. S. T., c. 521, Title VI, §§ 603, 609, 65 Stat. 567, provided that:

"The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811 (c) of the Internal Revenue Code, [1939] as amended by subsection (a), shall (except as otherwise specifically provided in such section or in the following two sentences) apply to transfers made on, before, or after February 26, 1926. The provisions of section 811(c) (1) (B) of such code [1939] shall not, in the case of a decedent dying prior to January 1, 1951, apply to—

"(1) a transfer made prior to March 4, 1931; or

"(2) a transfer made after March 3, 1931, and prior to June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

"The provisions of section 811(c) (1) (C) of such code [1939] shall not apply to a transfer made prior to September 8, 1916.

"No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act [Oct. 25, 1949]."

Effective Date of 1948 Amendment. Section 351(a) of Act Apr. 2, 1948, provided in part that repeal of subssecs. (d) (5), (e) (2), and (g) (4) by section 351(a) of said Act Apr. 2, 1948, should be effective with respect to estates of decedents dying after Dec. 31, 1948.

Section 364(b) of Act Apr. 2, 1948, provided that amendment of this section by section 364(a) of said Act Apr. 2, 1948, should be applicable only with respect to estates of decedents dying after Dec. 31, 1947.

Effective Date of 1942 Amendment. Amendments of subssecs (d) (5), (e) (1, 2) and (f), by Act Oct. 21, 1942, §§ 402(a), (b), 463(a), were made applicable to estates of decedents dying after Oct. 21, 1942, 4.30 p. m., E. W. T., by section 401 thereof.

Short Title. Congress, in enacting the amendments to subsec. (f) of this sec-

tion, and subsec. (c) of section 1000 of I.R.C.1939, provided by section 1 of Act June 23, 1951 that it should be popularly known as the "Powers of Appointment Act of 1951".

Savings Clause. Section 351(c) of Act Apr. 2, 1948, provided that: "Notwithstanding the repeal of sections 811(d) (5), 811(e) (2), and 811(g) (4) provided in subsection (a) [section 351(a) of Act Apr. 2, 1948], the taxes imposed under chapter 3 of the Internal Revenue Code [this chapter] upon the transfer of the net estate of any decedent dying after December 31, 1947, and on or before the date of the enactment of this Act [3:18 p. m. E.S.T. Apr. 2, 1948] shall not exceed the taxes which would have been imposed under such chapter 3 upon such transfer if this section had not been enacted."

Exclusion of Certain Transfers Taking Effect at Death; Decedents Dying Before Feb. 11, 1939. Section 207(b) of Act Aug. 15, 1953 provided that: "For the purposes of section 302(c) of the Revenue Act of 1926, as amended, an interest of a decedent shall not be included in his gross estate as intended to take effect in possession or enjoyment at or after his death unless it would have been includible as such a transfer under section 811(c) (2) of the Internal Revenue Code [this section], as amended by section 7 of Public Law 378, Eighty-first Congress, approved October 25, 1949 (63 Stat. 891), had such section 811(c) (2), as so amended, applied to the estate of such decedent. No refund or credit of any overpayment resulting from the application of this subsection shall be allowed or made if prevented by the operation of the statute of limitations or by any other law or rule of law; except that if the determination of the Federal estate tax liability in respect of the estate of any decedent dying before February 11, 1939, was pending on January 17, 1949, in the Tax Court of the United States or in any other court of competent jurisdiction, or if a decision of the Tax Court of the United States or such other court determining such estate tax liability did not become final until on or after January 17, 1949, then refund or credit of any overpayment resulting from the application of this subsection may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act [Aug. 15, 1953], notwithstanding section 319(a) of the Revenue Act of 1926 or any other law or rule of law which would otherwise prevent the allowance of such refund or credit."

Section 207(c) of said Act Aug. 15, 1953 provided that no interest shall be allowed or paid on any overpayment resulting from the application of section 207(b) of said Act with respect to any payment made before Aug. 15, 1953.

Interest On Overpayment Resulting From 1953 Amendment. Section 207(c) of Act Aug. 15, 1953 provided that no interest be allowed or paid on any overpay-

ment resulting from the application of the amendment to subsec. (c) (1) with respect to any payment made before Aug. 15, 1953

Section 207(d) of said Act Aug. 15, 1953 provided in part that subsec. (b) of said Act should apply only with respect to estates of decedents dying before February 11, 1939.

Determination As To Transfers By Certain Decedents. Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title VI, § 607, 65 Stat. 567, provided that: "In the case of property transferred by a decedent dying after March 18, 1937, and before February 11, 1939, the determination of whether such property is to be included in his gross estate under section 302(c) of the Revenue Act of 1926 (44 Stat. 70) as a transfer intended to take effect in possession or enjoyment at or after his death shall be made in conformity with Treasury Regulations in force at the time of his death."

Date Of Creation Of Power Of Appointment. Section 2(b) of Act June 28, 1951, provided that: "For the purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942."

Section 2 of Act June 12, 1948, c. 459, 62 Stat. 388, provided that: "For the purposes of sections 403 and 452 of the Revenue Act of 1942 [sections 811(f), 812(d), 826(d), 861(a) (3) and 1000 I.R.C. 1939] a power to appoint created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942."

Release of Power of Appointment. Section 403(d) (3) of Act Oct. 21, 1942, as amended by Acts Dec. 17, 1942, c. 740, 56 Stat. 1054; June 9, 1943, 7 p. m., E.W.T., c. 120, § 10, 57 Stat. 150; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title V, § 505, 58 Stat. 72; Dec. 20, 1944, c. 616, § 1, 58 Stat. 830; June 29, 1945, c. 200, § 1, 59 Stat. 264; May 29, 1946, c. 278, 60 Stat. 229; June 25, 1947, c. 143, § 1, 61 Stat. 178; June 12, 1948, c. 459, § 1, 62 Stat. 387; Joint Res. June 28, 1949, c. 268, § 1, 63 Stat. 280; June 27, 1950, c. 371, 64 Stat. 260, provided that:

"(1) The amendments made by this section [to sections 811(f), 812(d), 826(d), 861(a) (3)] shall not apply with respect to a power to appoint, created on or before the date of the enactment of this Act (Oct. 21, 1942, 4:30 p. m., E.W.T.), which is other than a power exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, unless such power is exercised after the date of the enactment of this Act (Oct. 21, 1942, 4:30 p. m., E.W.T.).

"(2) The amendments made by this section [to sections 811(f), 812(d), 826(d), 861(a) (3)] shall not become applicable with respect to a power to appoint, created on or before the date of enactment of this Act (Oct. 21, 1942, 4:30 p. m., E.W.T.), which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, if at such date the donee of such power is under a legal disability to release such power, until six months after the termination of such legal disability. For the purposes of the preceding sentence, an individual in the military or naval forces of the United States shall, until the termination of the present war, be considered under a legal disability to release a power to appoint.

"(3) The amendments made by this section [to sections 811(f), 812(d), 826(d), 861(a) (3)] shall not apply with respect to any power to appoint, created on or before the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.] if it is released before July 1, 1951, or within the time limited by paragraph (2) in cases to which such paragraph is applicable; or if the decedent dies before July 1, 1951, or within the time limited by paragraph (2) in cases to which such paragraph is applicable, and such power is not exercised."

Tax Free Release Of Certain Life Estates. Section 8 of Act Oct. 25, 1949, provided that:

"In the case of a transfer of property made prior to June 7, 1932, under which the grantor retained (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, then an assignment by the grantor of such possession, enjoyment, or right to income, or a relinquishment by him of such right of designation, shall, if made in 1949 or 1950, not be deemed a transfer of property for the purposes of chapter 4 of the Internal Revenue Code [1939], and shall, if made prior to 1951, not be deemed to have been made in contemplation of death within the meaning of chapter 3 of such code. The foregoing provisions shall not apply—

"(A) if the transfer was made after March 3, 1931, and prior to June 7, 1932, and if the property transferred would have been includible in the grantor's gross estate upon his death by reason of the amendatory language of the joint resolution of March 3, 1931 (45 Stat. 1516); or

"(B) if the property transferred would have been includible in the grantor's gross estate under section 811(d) of the Internal Revenue Code [1939] had he died on October 7, 1949."

Reversionary Interests In Case Of Life Insurance. Section 209 of Act Aug. 15, 1953 provided that:

"(a) Decedents dying after January 10, 1941, and before October 22, 1942, ex-

fective with respect to estates of decedents dying after January 10, 1941, and before October 22, 1942, the proceeds of life insurance receivable by beneficiaries other than the executor shall not be included in the gross estate of a decedent under section 811(g) of the Internal Revenue Code [this section] unless such proceeds would have been includible under section 404(c) of the Revenue Act of 1942 (as amended by section 503(a) of the Revenue Act of 1950) had such section 404(c), as so amended, applied to such estate.

“(b) Interest. No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made before the date of the enactment of this Act [Aug. 15, 1953].”

Effective with respect to estates of decedents dying after Oct. 21, 1942, section 404(c) of Act Oct. 21, 1942, as amended by section 503(a) of Act Sept. 23, 1950, cited to text, provided that: “For the purposes of the preceding sentence, the term ‘incident of ownership’ includes a reversionary interest only if (1) at some time after January 10, 1941, the value of such reversionary interest exceeded 5 per centum of the value of the policy, and (2) the reversionary interest arose by the express terms of the policy or other instrument and not by operation of law. As used in this subsection, the term ‘reversionary interest’ includes a possibility that the policy, or the proceeds of the policy, (A) may return to the decedent or his estate, or (B) may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.”

Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title VI, § 610, 65 Stat. 568, provided that: “If refund or credit of any overpayment resulting from the application of section 503 of the Internal Revenue Act of 1950 [Act Sept. 23, 1950, c. 994, Title V, § 503, 64 Stat. 962, subsec. (a) of which added last four sentences to Act Oct. 21, 1942, § 404(c), set out in note immediately above, and subsec. (b) of which is set out in note immediately following this note] was prevented on October 25, 1950, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code [section 3760 of I.R.C.1939], relating to closing agreements, and other than section 3761 of such code [section 3761 of I.R.C.1939], relating to compromises), refund or credit may, nevertheless, be made or allowed if claim therefor was filed after October 25, 1949, and on or before October 25, 1950”.

Amendment of subsec. (g) by Act Oct. 21, 1942, § 404(a), was made effective by section 404(c) thereof as follows: “(c) The amendments made by subsection (a) [to section 811(g)] shall be applicable only to estates of decedents dying after the date of the enactment of this Act [Oct. 21, 1942, 11 30 p. m., E.W.T.]; but in determining the proportion of the premiums or other consideration paid directly or indirectly by the decedent (but not the total premiums paid) the amount so paid by the decedent on or before January 10, 1941, shall be excluded if at no time after such date the decedent possessed an incident of ownership in the policy.”

No Interest On Refunds. Section 503 (b) of Act Sept. 23, 1950, provided that: “No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.”

Refunds Or Credits. Section 7(c) of Act Oct. 25, 1949, as amended by Act Sept. 6, 1950, c. 898, 64 Stat. 770, provided that: “If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code, relating to closing agreements, and other than section 3761 of such code, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act. This subsection shall not apply with respect to a transfer of property in case (1) the decedent retained for his life or for any period not ascertainable without reference to his death or for any period which did not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy the property or the income therefrom, and (2) refund or credit of any overpayment resulting from the application of subsections (a) and (b) was prevented on or before January 16, 1949, by the operation of any law or rule of law.”

Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title VI, § 609, 65 Stat. 567, provided in part that the provisions of section 7 (c) of Act Oct. 25, 1949, as amended (quoted immediately above), should not apply to an overpayment resulting from the application of such section 609 amended section 7(b) of said Act Oct. 25, 1949 (providing the effective date of amendment by that Act to subsec. (c) of this section, and also set out in note under this section) by substituting, in opening paragraph of such section 7(b), “two sentences” in lieu of “sentence”, and by inserting, in such section 7(b), the para-

graph immediately preceding the last paragraph.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3 15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2423. See, also, Acts June 28, 1951, 1951 U.S.Code Cong.Service, p. 1530; Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053; Apr. 2, 1948, 1948 U.S.Code Cong. Service, p. 1163.

§ 812. Net estate

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

(a) **Exemption.** An exemption of \$100,000;

(b) **Expenses, losses, indebtedness, and taxes.** Such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate, and

(4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded upon a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in subsection (d) for the purposes specified therein, the deduction for such claim shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under subsection (d) if such promise or agreement constituted a bequest. There shall be disallowed the amount by which the deductions specified in paragraphs (1), (2), (3), and (4) exceed the value, at the time of the decedent's death, of property subject to claims. For the purposes of this section the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would, under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate; and, for the purposes of this definition, the value of the property shall be reduced by the amount of the deduction under the next sentence attributable to such property. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property

or estate, shall not be considered to any extent a consideration "in money or money's worth."

(c) **Property previously taxed.** An amount equal to the value of any property (1) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (2) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. Property includible in the gross estate of the prior decedent under section 811(f) and property included in total gifts of the donor under section 1000(c) received by the decedent described in this subsection shall, for the purposes of this subsection, be considered a bequest of such prior decedent or gift of such donor. This deduction shall be allowed only where a gift tax imposed under Chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this chapter or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this subsection, section 861(a) (2), or the corresponding provisions of any prior Act of Congress, in respect of the property or property given in exchange therefor.

The following property shall not, for the purposes of this subsection, be considered as property with respect to which a deduction may be allowed: (A) property received from a prior decedent who died after December 31, 1947, and was at the time of such death the decedent's spouse, (B) property received by gift after the date of the enactment of the Revenue Act of 1948 from a donor who at the time of the gift was the decedent's spouse, and (C) property acquired in exchange for property described in clause (A) or (B).

Where, under the provisions of section 1000(f), a gift received by the decedent was considered as made one-half by the donor and one-half by the donor's spouse, one-half of the gift shall be considered as received by the decedent from each such spouse.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this subsection shall be reduced by the amount so paid. The deduction under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (d), and (e) and the amounts of general claims allowed as deductions under subsection (b) as the amount otherwise deductible under this subsection bears to property subject to general claims. If the property includible in the gross estate to which the deduction under this subsection is attributable is not wholly property subject to general claims—

(1) before the application of the preceding sentence, the amount of the deduction under this subsection shall be reduced by that part of such amount as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to claims but not to general claims is of the value, at the time of the decedent's death, of such property, and

(2) in the application of the preceding sentence in reducing the balance, if any, of such deduction, "the amount otherwise deductible under this subsection" shall be only that part of such amount otherwise deductible (determined without regard to clause (1) of this paragraph) as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to general claims is of the value, at the time of the decedent's death, of such property.

For the purposes of the two preceding sentences and this sentence, "general claims" are the amounts allowed as deductions under subsection (b) which, under the applicable law, in the final adjustment and settlement of the estate may be enforced against any property subject to claims, as defined in subsection (b), and "property subject to general claims" is the value, at the time of the decedent's death, of property subject to claims, as defined in subsection (b), reduced by the value, at the time of the decedent's death, of that part of such property against which amounts allowed as deductions under subsection (b) which are not general claims may be enforced, under the applicable law, in the final adjustment and settlement of the estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(d) **Transfers for public, charitable, and religious uses.** The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made prior to the date prescribed for the filing of the estate tax return or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation, or to or for the use of the United Nations, but only if such bequests, legacies, devises, or transfers to or for the use of the United Nations are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and the death of the decedent occurred after December 1, 1946, and before December 2, 1947. Property includible in the decedent's gross estate under section 811(f) received by a donee described in this subsection shall, for the purposes of this subsection, be considered a bequest of such decedent. If the tax imposed by section 810, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this subsection for any transfer shall not exceed the

value of the transferred property required to be included in the gross estate. For disallowance of certain charitable, etc., deductions otherwise allowable under this subsection, see sections 3813 and 162(g) (2).

(e) Bequests, etc., to surviving spouse

(1) Allowance of marital deduction

(A) In general. An amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(B) Life estate or other terminable interest. Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(i) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(ii) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse; and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under clauses (i) and (ii))—

(iii) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For the purposes of this subparagraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(C) Interest in unidentified assets. Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.

(D) Interest of spouse conditional on survival for limited period. For the purposes of subparagraph (B) an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail upon the death of such spouse if—

(i) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding six months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(ii) such termination or failure does not in fact occur.

(E) Valuation of interest passing to surviving spouse. In determining for the purposes of subparagraph (A) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this subsection—

(i) there shall be taken into account the effect which a tax imposed by this chapter, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of such interest; and

(ii) where such interest or property is incumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such incumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(F) **Trust with power of appointment in surviving spouse.** In the case of an interest in property passing from the decedent in trust, if under the terms of the trust his surviving spouse is entitled for life to all the income from the corpus of the trust, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire corpus free of the trust (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the surviving spouse—

(i) the interest so passing shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse, and

(ii) no part of the interest so passing shall, for the purposes of subparagraph (B) (i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the surviving spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(G) **Life Insurance or Annuity Payments With Power of Appointment in Surviving Spouse.** In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, upon the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than thirteen months after the decedent's death, and all amounts payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint to any person other than the surviving spouse any part of the amounts payable under such contract—

(i) such proceeds shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse, and

(ii) no part of such proceeds shall, for the purposes of subparagraph (B) (i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the contract, such power in the surviving spouse to appoint, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(H) **Limitation on aggregate of deductions.** The aggregate amount of the deductions allowed under this paragraph (computed without regard to this subparagraph) shall not exceed 50 per centum of the value of the adjusted gross estate, as defined in paragraph (2).

(2) Computation of adjusted gross estate

(A) **General rule.** Except as provided in subparagraph (B) of this paragraph the adjusted gross estate shall, for the purposes of paragraph (1) (H), be computed by subtracting from the entire value of the gross

estate the aggregate amount of the deductions allowed by subsection (b) of this section.

(B) Special rule in cases involving community property. If the decedent and his surviving spouse at any time held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for the purposes of paragraph (1) (H), be determined by subtracting from the entire value of the gross estate the sum of:

(i) the value of property which is at the time of the death of the decedent held as such community property; and

(ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

(iii) the amount receivable as insurance under policies upon the life of the decedent to the extent purchased with premiums or other consideration paid out of property held as such community property; and

(iv) an amount which bears the same ratio to the aggregate of the deductions allowed under subsection (b) of this section which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For the purposes of clauses (i), (ii), and (iii) community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not "held as such community property" as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 811(a) (2). The amount to be subtracted under clause (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

(C) Same—Conversion into separate property

(i) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of co-ownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as "held as such community property".

(ii) Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.

(3) Definition. For the purposes of this subsection an interest in property shall be considered as passing from the decedent to any person if and only if—

(A) such interest is bequeathed or devised to such person by the decedent; or

(B) such interest is inherited by such person from the decedent; or
 (C) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent; or
 (D) such interest has been transferred to such person by the decedent at any time; or

(E) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship; or

(F) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or nonexercise of such power; or

(G) such interest consists of proceeds of insurance upon the life of the decedent receivable by such person.

Except as provided in subparagraph (F) or (G) of paragraph (1), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for the purposes of classes (i) and (ii) of subparagraph (B) of paragraph (1), be considered as passing from the decedent to a person other than the surviving spouse.

(4) Disclaimers

(A) By surviving spouse. If under this subsection an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this subsection, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(B) Disclaimer by any other person. If under this subsection an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for the purposes of this subsection, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made. 53 Stat. 123, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, §§ 403(b) (1), 405(a, b), 406(a), 407(a) (1, 2), 408(a), 409(a), 56 Stat. 943, 945, 947-949; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 511(a), 58 Stat. 74; Feb. 26, 1947, c. 7, § 5, 61 Stat. 7; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, §§ 361(a), 362, 62 Stat. 117, 121; July 1, 1948, c. 789, § 1, 62 Stat. 1214; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 332(e), Title V, § 502, 64 Stat. 959, 962.

Historical Note

References in Text. Date of enactment of Revenue Act of 1948 referred to in subsecs. (c), (e) (2) (C) (1), was 3:18 p. m., E. S. T., Apr. 2, 1948.

1950 Amendment. Subsec. (b) amended by Act Sept. 23, 1950, § 502, which inserted "and" at end of par. (3), struck out "and" at end of par. (4), struck out par. (5), and substituted "(3) and (4)" in lieu of "(3), (4), and (5)" following "specified in paragraphs (1), (2)".

Subsec. (d) amended by Act Sept. 23, 1950, § 332(e), which added "For disallowance of certain * * * and 162(g) (2)".

1948 Amendment. Subsec. (c) amended by Act Apr. 2, 1948, § 362, which added the second and third pars. to generally disallow with respect to property passing between spouses the deduction under this subsec. for property previously taxed, and changed reference from "subsections (a) and (d)" to "subsections (a), (d), and (e)" in the fourth par.

Subsec. (e) added by Act Apr. 2, 1948, § 361(a), to provide for marital deduction for bequests to spouse.

Subsec. (e) (1) (G) amended by Joint Res. July 1, 1948, to require that the first payment (interest or installment, as the

case may be), be payable under the contract not later than 13 months after decedent's death instead of within one year as formerly, to extend the provision to annuity and endowment contracts, and to clarify the requirement that the surviving spouse must have power to appoint all amounts payable after the decedent's death under the contract by providing that a power will qualify if it is exercisable in favor of the surviving spouse.

1947 Amendment. Subsec. (d) amended by Act Feb. 26, 1947, so as to allow the deductions of bequests, legacies, devises, or transfers to the United Nations for the acquisition of a site in New York City in the case of decedents dying after Dec. 1, 1946, and prior to Dec. 2, 1947.

1944 Amendment. Subsec. (d) amended by Act Feb. 25, 1944, which inserted "or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944" following "if the disclaimer is made prior to the date prescribed for the filing of the estate tax return".

1942 Amendment. Subsecs. (b)-(d) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (c) amended by Joint Res. Mar. 17, 1941, which inserted "or under Title III of the Revenue Act of 1932, 47 Stat. 245,".

Effective Date of 1950 Amendment. Section 502 of Act Sept. 23, 1950, provided in part that the amendment of subsec. (b) should be effective with respect to estates of decedents dying after Sept. 23, 1950.

Effective Date of 1948 Amendments. Section 2 of Joint Res. July 1, 1948, provided that the amendment of subsec. (e) (1) (G) by section 1 of said Joint Res. July 1, 1948, shall be applicable to estates of decedents dying after Dec. 31, 1947.

Section 361(b) of Act Apr. 2, 1948, provided that subsec. (e) of this section as added by section 361(a) of said Act Apr. 2, 1948, shall be applicable only with respect to estates of decedents dying after Dec. 31, 1947.

Effective Date of 1944 Amendment. Amendment of subsec. (d) by Act Feb. 25, 1944, § 511(a), was made applicable to estates of decedents dying after Feb. 10, 1939, by section 511(c) thereof.

Effective Date of 1942 Amendment. Amendments of subsecs. (b), (c) affecting second, third, and fourth sentences of second par., and (d) adding last clause to first sentence, by Act Oct. 21, 1942, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Amendment of subsec. (c), first par., by Act Oct. 21, 1942, § 407(a) (1), and amendment of subsec. (c), second par., first sentence by section 407(a) (2) thereof, were made applicable by section 407(c) (1, 2) thereof as follows:

"(1) The amendments made by subsection (a) (1) [to section 812(c) first

par.] shall be applicable to estates of decedents dying after the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.], except that the reference therein to 'an estate tax imposed under his [this] chapter or any prior Act of Congress,' shall be applicable with respect to estates of decedents dying after February 10, 1939.

"(2) The amendment made by subsection (a) (2) [to section 812(c), first sentence of second par.] shall be applicable with respect to estates of decedents dying after February 10, 1939."

Amendment of subsec. (d) by Act Oct. 21, 1942, § 403(b), inserting second sentence beginning "Property includible in the decedent's gross estate," was qualified in its application to certain powers by section 403(d) thereof, set out in effective date note under section 811.

Amendment of subsec. (d), inserting parenthetical clause in first sentence, by Act Oct. 21, 1942, § 408(a) was made applicable to estates of decedents dying after Feb. 10, 1930 by section 408(c) thereof.

Effective Date of 1941 Amendment. Act Mar. 17, 1941, § 1, amending subsec. (a) (2), was made effective as of Feb. 10, 1939, by section 2 thereof.

Date of Creation of Power of Appointment. Time of creation of power of appointment, see note set out under section 811 of I.R.C.1939.

Overpayments. Section 407(d) of Act Oct. 21, 1942, provided as follows: "(d) If the refund or credit of any overpayment to the extent resulting from the application of subsections (a), (b), and (c) of this section, [amending sections 812(c) and 861(a) (2) and the Revenue Act of 1926, § 303(a, b)] is prevented on the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.] or within one year from such date, then, notwithstanding any other provision of law or rule of law (other than this subsection of this section and other than section 3761 of the Internal Revenue Code or section 3229 of the Revised Statutes, or such section as amended by section 815 of the Revenue Act of 1938, relating to compromises), such overpayment shall be refunded or credited in the same manner as in the case of an estate tax erroneously collected if claim therefor is filed within one year from the date of enactment of this Act. [Oct. 21, 1942, 4:30 p. m., E.W.T.]."

Marital Deduction in Certain Cases Where Decedent Died Before April 8, 1948. Section 210 of Act Aug. 15, 1953, c. 512, 67 Stat. 624, 625, provided that:

"(a) In General. In the case of an interest in property passing by will from the decedent, if the surviving spouse is entitled for life to all the income from such property, payable annually or at more frequent intervals, with power in the surviving spouse to use and consume such portion of the property as the surviving spouse may need or desire for her (or his) comfortable support and

maintenance, and with no power in any person other than the surviving spouse to appoint any part of such property, then—

"(1) the interest so passing shall, for the purposes of subparagraph (A) of section 812(e) (1) of the Internal Revenue Code [this section], be considered as passing to the surviving spouse; and

"(2) no part of the interest so passing shall, for the purposes of subparagraph (B) (1) of section 812(e) (1) of the Internal Revenue Code [this section], be considered as passing to any person other than the surviving spouse.

"Nothing in this subsection shall be construed to permit the same items to be twice deducted.

"(b) Election. The provision of subsection (a) shall apply only if the surviving spouse files an election under this section with the Secretary within one year after the date of the enactment of this Act [Aug. 15, 1953] under such regulations as the Secretary shall prescribe. If such election is so filed, the property subject to such power shall, notwithstanding any other provision of law, be considered for purposes of chapters 3 and 4 of the Internal Revenue Code [section 800 et seq. and section 1000 et seq. of this title] as property as to which the surviving spouse had a general power of appointment exercisable by deed or will. If the surviving spouse has made an election pursuant to this section, the periods of limitation provided in chapters 3 and 4 of the Internal Revenue Code [section 800 et seq. and section 1000 et seq. of I.R.C.1939] on the making of an assessment and the beginning of distraint or a proceeding in court for collection shall, with respect to any deficiency and interest thereon resulting from such election, include one year immediately following the date such election is filed, and such assessment and collection may be made notwithstanding any provision of law or any rule of law which other-

wise would prevent such assessment and collection.

"(c) Interest. No interest shall be allowed or paid on any overpayment resulting from the application of this section.

"(d) Effective Date. This section shall apply only with respect to estates of decedents dying after December 31, 1947, and on or before the date of the enactment of the Revenue Act of 1948 [Apr. 2, 1948]. If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act [Aug. 15, 1953], or within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code [section 3760 of I.R.C.1939], relating to closing agreements, and other than section 3761 of such code [section 3761 of this title], relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act [Aug. 15, 1953]."

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong. Service, p. 3053. See, also, Acts July 1, 1948, 1948 U.S.Code Cong. Service, p. 2256; Apr. 2, 1948, 1948 U.S.Code Cong. Service, p. 1163; Feb. 26, 1947, 1947 U.S.Code Cong. Service, p. 956.

§ 813. Credit against tax

(a) **Gift tax**—(1) **Revenue Act of 1924.** In case a tax has been imposed under section 319 of the Revenue Act of 1924, 43 Stat. 313, as amended by section 324 of the Revenue Act of 1926, 44 Stat. 86, upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this subchapter to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of this subchapter (after deducting from such tax the credit provided by section 813(b)), an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by said section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(2) Revenue act of 1932 or chapter 4. (A) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 810 or 860 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 or 860 (after deducting from such tax the credits provided by section 813(a) (1) and (b)) as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812.

(B) In applying, with respect to any gift, the ratio stated in subparagraph (A), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(i) by such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

(ii) if a deduction with respect to such gift is allowed under section 812(e) (the so-called "marital deduction")—then by an amount which bears the same ratio to such value (reduced as provided in clause (i) of this subparagraph) as the aggregate amount of the marital deductions allowed under section 812(e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812(e) (1); and

(iii) if a deduction with respect to such gift is allowed under section 812(d) (the so-called "charitable deduction")—then by the amount of such value, reduced as provided in clause (i) of this subparagraph.

(C) Where the decedent was the donor of the gift but, under the provisions of section 1000(f), the gift was considered as made one-half by his spouse—

(i) the term "the amount of the tax paid under chapter 4", as used in subparagraph (A) of this paragraph, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subparagraph (D); and

(ii) in applying, with respect to such gift, the ratio stated in subparagraph (A) of this paragraph, the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in clause (i) of subparagraph (B) of this paragraph.

(D) (i) For the purposes of subparagraph (A), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(ii) For the purposes of clause (i) the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004(a) (2), or under section 505(a) (2) of the Revenue Act of 1932

(the so-called "charitable deduction"), or under section 1004(a) (3) (the so-called "marital deduction").

(b) **Estate, succession, legacy, and inheritance taxes.** The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, or any possession of the United States, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860 (before deducting from such tax the credits provided by section 813(a) (1) and (2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

(1) If a petition for redetermination of a deficiency has been filed with The Tax Court of the United States within the time prescribed in section 871, then within such four-year period or before the expiration of 60 days after the decision of The Tax Court becomes final.

(2) If, under section 822(a) (2) or section 871(h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(c) Same—Paid to foreign countries

(1) **In general.** The tax imposed by section 810 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). If the decedent at the time of his death was not a citizen of the United States, credit shall not be allowed under this subsection unless the foreign country of which such decedent was a citizen or subject, in imposing such taxes, allows a similar credit in the case of a citizen of the United States resident in such country. The determination of the country within which property is situated shall be made in accordance with the rules applicable under Part III of this subchapter in determining whether property is situated within or without the United States.

(2) **Limitations on credit.** The credit provided in this subsection with respect to such taxes paid to any foreign country—

(A) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

(i) situated within such foreign country,

(ii) subjected to such tax, and

(iii) included in the gross estate

bears to the value of all property subjected to such tax; and

(B) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 810 (after deducting from such tax the credits provided by subsections (a) and (b) of this section) as the value of property which is—

(i) situated within such foreign country,

(ii) subjected to the taxes of such foreign country, and

(iii) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under subsections (c), (d), and (e) of section 812.

(3) Valuation of property

(A) The values referred to in the ratio stated in paragraph (2) (A) are the values determined for the purposes of the tax imposed by such foreign country.

(B) The values referred to in the ratio stated in paragraph (2) (B) are the values determined under this chapter; but, in applying such ratio, the value of any property described in clauses (i), (ii), and (iii) thereof shall be reduced by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary, the deductions allowed in respect of such property under subsections (c), (d), and (e) of section 812.

(4) **Proof of credit.** The credits provided in this subsection and in section 936(c) shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary (A) the amount of taxes actually paid to the foreign country, (B) the amount and date of each payment thereof, (C) the description and value of the property in respect of which such taxes are imposed, and (D) all other information necessary for the verification and computation of the credits.

(5) **Period of limitation.** The credits provided in this subsection and in section 936(c) shall be allowed only for such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821, except that—

(A) If a petition for redetermination of a deficiency has been filed with The Tax Court of the United States within the time prescribed in section 871, then within such four-year period or before the expiration of 60 days after the decision of The Tax Court becomes final.

(B) If, under section 822(a) (2) or section 871(h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on such credits may (despite the provisions of sections 910 to 912, inclusive) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest. 53 Stat. 125, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 403, 53 Stat. 883; Mar. 17, 1941, c. 21, § 1, 55 Stat. 45; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 410, Title V, § 504(a, c), 56 Stat. 950, 957; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, § 363(a), (b), 62 Stat. 121; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 603(a), 65 Stat. 563.

Historical Note

1951 Amendment. Subsec. (c) added by Act Oct. 20, 1951.

1948 Amendment. Subsec. (a) (2) (A) amended by Act Apr. 2, 1948, § 363(a), which added at the end thereof "reduced by the aggregate * * * of section 812" to allow a larger credit for the gift tax in certain instances.

Subsec. (a) (2) (B)-(D) amended by Act Apr. 2, 1948, § 363(b), to give effect in computing the credit for the gift tax to the estate and gift tax provisions for a marital deduction under sections 812(e) and 1004(a) (3) of I.R.C.1939 and to the gift-tax provisions for splitting of gifts of spouses to third parties under section 1000(f) of I.R.C.1939.

1942 Amendment. Subsecs. (a) (1), (2) (A) and (b), first par. amended by Act Oct. 21, 1942, § 410.

1941 Amendment. Subsecs. (a) (2) and (b) amended by Joint Res. Mar. 17, 1941.

1939 Amendment. Subsec. (b) amended by Act June 29, 1939.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1951 Amendment. Section 603(e) of Act Oct. 20, 1951 provided that the amendments made by that Act to this section and sections 874, 927, and 936 of I.R.C.1939 should be applicable with respect to estates of decedents dying after the date of enactment of such Act (Oct. 20, 1951).

Effective Date of 1948 Amendment. Section 363(e) of Act Apr. 2, 1948, pro-

vided that amendments to sections 813 and 836 by section 363(a)-(d) of said Act Apr. 2, 1948, should be applicable only with respect to the estates of decedents dying after Dec. 31, 1947.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, § 410, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Effective Date of 1941 Amendment. Act Mar. 17, 1941, § 1, affecting subsecs. (a) (2) and (b) was made effective as of Feb. 10, 1939, by section 2 thereof.

Effective Date of 1939 Amendment. Act June 29, 1939, was made applicable only with respect to estates of decedents dying after date of enactment of Revenue

Act of 1939; which was on June 29, 1939, 10 p. m., E.S.T.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Act Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 1163.

Subpart II.—Returns and Payment of Tax

§ 820. Executor's notice

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. 53 Stat. 126.

§ 821. Returns

(a) Requirement

(1) **Returns by executor.** In all cases where the gross estate at the death of a citizen or resident exceeds the amount of the specific exemption provided in section 812(a), the executor shall make a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death; (2) the deductions allowed under section 812; (3) the value of the net estate of the decedent as defined in section 812; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) **Returns by beneficiaries.** If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(3) Cross reference

For provision requiring a return where the gross estate exceeds \$40,000, see section 937.

(b) **Time for filing.** The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) **Place for filing.** The return required of the executor under subsection (a) shall be filed with the collector of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

(d) **Records, statements, and returns.** Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and com-

ply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(e) Cross references

For general provisions relating to returns, see the following:

- Section 3003 Notice requiring records, statements, and special returns.
- Section 3611. Returns executed by taxpayer.
- Section 3612. Returns executed by Commissioner or collector.
- Section 3614. Verification and making of returns by Commissioner.
- Section 3615. Summons from collector to produce books and give testimony.
- Section 3631. Restrictions on examination of taxpayers.
- Section 3632. Authority to administer oaths, take testimony, and certify.
- Section 3634. Extension of time for filing returns.

53 Stat. 126.

Historical Note

Codification. Subsec. (a) (3) relating ly should read "exceeds \$60,000" in view to provision requiring a return where of section 935(c) of I.R.C.1939.
the gross estate exceeds \$40,000 probab-

§ 822. Payment of tax

(a) Time of payment

(1) General rule. The tax imposed by this subchapter shall be due and payable fifteen months after the decedent's death.

(2) Extension of time. Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

(3) Cross reference

For extension of time in case of future interests, see Supplement F.

(b) Liability for payment. The tax imposed by this subchapter shall be paid by the executor to the collector. 53 Stat. 127.

§ 823. Duplicate receipts

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. 53 Stat. 127.

§ 824. Examination of return and determination of tax

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. 53 Stat. 127.

§ 825. Discharge of executor from personal liability

(a) Application for discharge. If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of

the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(b) **Cross reference**

For continuance of lien upon the gross estate after discharge of executor, see section 827(c).
53 Stat. 127.

§ 826. Collection of unpaid tax

(a) **Sale of property.** If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law; or appropriate proceedings may be commenced in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subsection in so far as it applies to the collection of a deficiency shall be subject to the provisions of sections 871 and 891.

(b) **Reimbursement out of estate.** If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(c) **Liability of life insurance beneficiaries.** Unless the decedent directs otherwise in his will, if any part of the gross estate upon which tax has been paid consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the sum of the net estate and the amount of the exemption allowed in computing the net estate, determined under section 935(c). If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 812(e) (the so-called "marital deduction"), this subsection shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such subsection.

(d) **Liability of recipient of property over which decedent had power of appointment.** Unless the decedent directs otherwise in his will, if any part of the gross estate upon which the tax has been paid consists of the value of property included in the gross estate under section 811(f), the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the sum of the net estate and the amount of the exemp-

tion allowed in computing the net estate, determined under section 935(c), or section 861, as the case may be. If there is more than one such person the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 812(e) (the so-called "marital deduction"), this subsection shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 812(e) over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such subsection. 53 Stat. 127, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, §§ 403(c), 404(b), 414(b), 56 Stat. 943, 945, 951; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, § 365(a), (b), 62 Stat. 124.

Historical Note

1948 Amendment. Subsec. (c) amended by Act Apr. 2, 1948, § 365(a), which added last sentence to give effect, in apportioning any liability under this subsec. and subsec. (d) of this section in the case of decedent's surviving spouse, to the marital deduction allowed under section 812(e) of I.R.C.1939 with respect to insurance proceeds or property which passed to said spouse.

Subsec. (d) amended by Act Apr. 2, 1948, § 365(b), which added last sentence to give effect, in apportioning any liability under this subsec. and subsec. (e) of this section in the case of decedent's surviving spouse, to the marital deduction allowed under section 812(e) of I.R.C.1939 with respect to insurance proceeds or property which passed to said spouse.

1942 Amendment. Subsec. (c) amended by Act Oct. 21, 1942, §§ 404(b), 414(b). Act Oct. 21, 1942, § 404(b) amended section generally. Act Oct. 21, 1942, § 414(b) omitted "in excess of \$40,000," from first sentence.

Subsec. (d) added by Act Oct. 21, 1942, § 403(c).

Effective Date of 1948 Amendment. Section 365(c) of Act Apr. 2, 1948, pro-

vided that the amendments to this section by section 365(a), (b) of said Act Apr. 2, 1948 should be applicable only with respect to estates of decedents dying after Dec. 31, 1947.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Amendment by Act Oct. 21, 1942, § 403(c) adding subsec. (d), was qualified in its application to certain powers by section 403(d) thereof, set out in effective-date note under section 811.

Date of Creation of Power of Appointment. Time of creation of power of appointment, see note set out under section 811 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Apr. 2, 1948, see 1948 U.S.Code Cong Service, p. 1163.

§ 827. Lien for tax

(a) **Upon gross estate.** Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) **Liability of transferee, etc.** If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811(b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property sold by such

spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 827(a) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) **Continuance after discharge of executor.** The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(d) **Cross reference**

For authority of collector to release lien, see sections 3673 and 3674.

53 Stat. 128, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 411(a), 56 Stat. 950.

Historical Note

1942 Amendment. Subsec. (b) amended by Act Oct. 21.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 828. Cross references

For payment of tax in case of estates in China, see Supplement E of Part IV.

For interest, additions to tax, and penalties, see Supplement B of Part IV.

For general provisions relating to assessment, collection, closing agreements, compromises, and refunds, see chapters 35, 36, and 37 of subtitle D.

53 Stat. 129.

Subpart III.—Miscellaneous Provisions

§ 840. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter. 53 Stat. 129.

§ 841. Cross references

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this subchapter, see section 3791.

For other administrative provisions of a general character, see subtitle D.

53 Stat. 129.

Subpart IV.—Special Classes of Residents

§ 850. Missionaries in foreign service

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign

service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service. 53 Stat. 129.

§ 851. Citizens with estates in China

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. 53 Stat. 129.

Historical Note

References in Text. "United States Court for China," referred to in text, was rendered inoperative by the Treaty of Jan. 11, 1943, between the United States and China, 57 Stat., Part II, 767, by which the United States relinquished extraterritorial rights in China.

PART III.—ESTATES OF NONRESIDENTS NOT CITIZENS OF THE UNITED STATES

§ 860. Rate of tax

A tax equal to the sum of the percentages set forth in section 810 of the value of the net estate (determined as provided in section 861) shall be imposed upon the transfer of the net estate of every decedent nonresident not a citizen of the United States dying after the date of the enactment of this title. 53 Stat. 129.

§ 861. Net estate

(a) **Deductions allowed.** For the purpose of the tax the value of the net estate shall be determined, in the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States—

(1) **Expenses, losses, indebtedness, and taxes.** That proportion of the deductions specified in section 812(b) (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 812(b) in the case of a claim against the estate which was founded upon a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (3) if such promise or agreement constituted a bequest.

(2) **Property previously taxed.** An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. Property includible in the gross estate of the prior decedent under section 811(f) and property included in total gifts of the donor under section 1000(c) received by the decedent described in this paragraph shall, for the purposes of this paragraph, be considered a bequest of such prior decedent or gift of such donor. This deduction shall be allowed only where a gift tax imposed under Chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this chapter or any prior

Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph, section 812(c), or the corresponding provisions of any prior Act of Congress, in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (3) and (4) and the amount of general claims allowed as deduction under paragraph (1) of this subsection as the amount otherwise deductible under this paragraph bears to property subject to general claims. If the property includible in the gross estate to which the deduction under the paragraph is attributable is not wholly property subject to general claims—

(A) before the application of the preceding sentence, the amount of the deduction under this paragraph shall be reduced by that part of such amount as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to claims but not to general claims is of the value, at the time of the decedent's death, of such property, and

(B) in the application of the preceding sentence in reducing the balance, if any, of such deduction, "the amount otherwise deductible under this paragraph" shall be only that part of such amount otherwise deductible (determined without regard to subparagraph (A)) as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to general claims is of the value, at the time of the decedent's death, of such property.

For the purposes of the two preceding sentences and this sentence, "general claims" are the amounts allowed as deductions under paragraph (1) of this subsection which, under the applicable law, in the final adjustment and settlement of the estate may be enforced against that part of any property subject to claims, as defined in subsection (b) of section 812 which at the time of the decedent's death is in the United States, and "property subject to general claims" is the value, at the time of the decedent's death, of such property subject to claims, reduced by the value, at the time of the decedent's death, of that part of such property subject to claims against which amounts allowed as deductions under paragraph (1) of this subsection which are not general claims may be enforced, under the applicable law, in the final adjustment and settlement of the estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3) **Transfers for public, charitable, and religious uses.** The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made prior to the date prescribed for the filing of the estate tax return, or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944) to or for the use of the United States, any State, Territory, any political

subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and before December 2, 1947, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation, or to or for the use of the United Nations, but only if such bequests, legacies, devises, or transfers to or for the use of the United Nations are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and the death of the decedent occurred after December 1, 1946. Property includible in the decedent's gross estate under section 811(f) received by a donee described in this paragraph shall, for the purposes of this paragraph, be considered a bequest of such decedent. If the tax imposed by section 860, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g) (2).

(4) **Exemption.** An exemption of \$2,000.

(b) **Condition of allowance of deductions.** No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 864 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(c) **United States bonds.** For the purposes of subsection (a), the value of the gross estate (determined as provided in section 811) of a decedent who was not engaged in business in the United States at the time of his death—

(1) shall not include obligations issued by the United States prior to March 1, 1941; and

(2) shall include obligations issued by the United States on or after March 1, 1941, but only if the decedent died after the date of the enactment of the Revenue Act of 1951. 53 Stat. 129, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, §§ 403(b) (2), 405(c), 406(b), 407(a) (3), 408(b), 409(b), 412(a), 56 Stat. 943, 946-949, 950, 951; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 511(b), 58 Stat. 75; Feb. 26, 1947, c. 7, § 5, 61 Stat. 7; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 332(f), 64 Stat. 959; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 604(a), 65 Stat. 566.

Historical Note

References in Text. Date of enactment of Revenue Act of 1951, referred to in subsec. (c) (2), was Oct. 20, 1951.

1951 Amendment. Subsec. (c) added by Act Oct. 20, 1951.

1950 Amendment. Subsec. (a) (3) amended by Act Sept. 23, 1950, which added "For disallowance of certain * * * and 162(g) (2)."

1947 Amendment. Subsec. (a) (3) amended by Act Feb. 26, 1947, so as to allow the deduction of bequests, legacies, devises, or transfers to the United Nations for the acquisition of a site in New York City in the case of decedents dying after Dec. 1, 1946, and prior to Dec. 2, 1947.

1944 Amendment. Subsec. (a) (3) amended by Act Feb. 25, 1944, which inserted "or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944" following "if the disclaimer is made prior to the date prescribed for the filing of the estate tax return", in the first sentence.

1942 Amendment. Subsec. (a) pars. (1-3) amended and par. (4) added by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) (2) as amended by Joint Res. Mar. 17, 1941.

Effective Date of 1951 Amendment. Section 604(a) of Act Oct. 20, 1951 also provided that the amendment of this section made by such section 604(a) should be effective with respect to estates of decedents dying after Feb. 10, 1939.

Effective Date of 1944 Amendment. Amendment of subsec. (a) (3) by Act Feb. 25, 1944, § 511(b), was made applicable to estates of decedents dying after Feb. 10, 1939, by section 511(c) thereof.

Effective Date of 1942 Amendment. Amendments of subsec. (a) pars. (1), (2), affecting next to last sentence, par. (3) adding last clause to first sentence, and adding par. (4), all by Act Oct. 21, 1942, §§ 406(b), 405(c), 409(b), and 412(a), were made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 401 thereof.

Amendment of subsec. (a) (2) by Act Oct. 21, 1942, § 407(a) (3), affecting first two sentences of said par. (2), were made applicable by section 407(c) (3) thereof as follows: "The amendments made by subsection (a) (3) [to section 861(a) (2)] shall be applicable to estates of decedents dying after the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.], except that the reference therein to "an estate tax imposed under this chapter or any prior Act of Congress," shall be applicable with respect to estates of de-

cedents dying after February 10, 1939

Amendment of subsec. (a) (3) by Act Oct. 21, 1942, § 403(b), inserting second sentence beginning "Property includible in the decedent's gross estate," was qualified in its application to certain powers by section 403(d) thereof set out in effective date note under section 811.

Amendment of subsec. (a) (3) by Act Oct. 21, 1942, § 408(b), inserting parenthetical clause in first sentence, was made applicable to estates of decedents dying after Feb. 10, 1939, by section 408 (c) thereof.

Effective Date of 1941 Amendment. Act Mar. 17, 1941, § 1, affecting subsec. (a) (2), was made effective Feb. 10, 1939, by section 2 thereof

Date of Creation of Power of Appointment. Time of creation of power of appointment, see note set out under section 811 of I.R.C.1939.

Overpayments. Section 407(d) of Act Oct. 21, 1942, provided as follows: "(d) If the refund or credit of any overpayment to the extent resulting from the application of subsections (a), (b), and (c) of this section, is prevented on the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m. E. W. T.] or within one year from such date, then, notwithstanding any other provision of law or rule of law (other than this subsection of this section and other than section 3761 of the Internal Revenue Code or section 3229 of the Revised Statutes, or such section as amended by section 815 of the Revenue Act of 1938, relating to compromises), such overpayment shall be refunded or credited in the same manner as in the case of an estate tax erroneously collected if claim therefor is filed within one year from the date of enactment of this Act."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat 937

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781. See, also, Acts Sept. 23, 1950, 1950 U.S.Code Cong. Service, p. 3053; Feb. 26, 1947, 1947 U.S. Code Cong.Service, p. 956.

§ 862. Property within the United States

For the purpose of this subchapter—

(a) **Stock in domestic corporation.** Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States; and

(b) **Revocable transfers and transfers in contemplation of death.** Any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of section 811 (c) or (d), shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death. 53 Stat. 131.

§ 863. Property without the United States

The following items shall not, for the purpose of this subchapter, be deemed property within the United States:

(a) **Proceeds of life insurance.** The amount receivable as insurance upon the life of a nonresident not a citizen of the United States; and

(b) **Bank deposits.** Any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death.

(c) **Works of art on loan for exhibition.** Works of art owned by a nonresident not a citizen of the United States (1) imported into the United States solely for exhibition purposes, (2) loaned for such purposes to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum. 53 Stat. 131, amended Sept. 1, 1950, c. 836, § 1, 64 Stat. 576; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 605(a), 65 Stat. 567.

Historical Note

1951 Amendment. Subsec. (c) amended by Act Oct. 20, 1951, to extend the estate tax exemption granted by such subsection with respect to works of art loaned by a nonresident alien to the National Gallery of Art, Washington, D. C., to works of art loaned to other public galleries or museums.

1950 Amendment. Subsec. (c) added by Joint Res. Sept. 1, 1950.

Effective Date of 1951 Amendment. Section 605(b) of Act Oct. 20, 1951 provided that the amendment made by that Act to this section should be applicable only with respect to estates of decedents dying after the date of enactment of such Act (Oct. 20, 1951).

Effective Date of 1950 Amendment. Section 4 of Joint Res. Sept. 1, 1950, provided in part that the amendment made

by section 1 of said Joint Res. Sept. 1, 1950, shall be applicable only with respect to estates of decedents dying after Sept. 1, 1950.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong Service, p. 1781. See, also, Act Sept. 1, 1950, 1950 U.S.Code Cong. Service, p. 3538.

§ 864. Returns

(a) Requirement

(1) **Returns by executor.** In the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate situated in the United States exceeds the amount of the specific exemption provided in section 861(a) (4), the executor shall make a return under oath in duplicate, setting forth (A) the value of that part of the gross estate of the decedent situated in the United States at the time of his

death; (B) the deductions allowed under section 861; (C) the value of the net estate of the decedent as defined in section 861; (D) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) **Returns by beneficiaries.** If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(b) **Time for filing.** The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) **Place for filing.** The return required of the executor under subsection (a) shall be filed with the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of such district as may be designated by the Commissioner. 53 Stat. 131, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 412(c), 56 Stat. 951.

Historical Note

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m. E. W. T., by section 401 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 865. Cross reference

For missionaries in foreign service, see section 859.
53 Stat. 131.

PART IV.—SUPPLEMENTAL PROVISIONS

Supplement A.—Assessment and Collection of Deficiencies

§ 870. Definition of deficiency

As used in this subchapter in respect of the tax imposed by this subchapter the term "deficiency" means—

(1) The amount by which the tax imposed by this subchapter exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax. 53 Stat. 132.

§ 871. Procedure in general

[(a) (1) **Petition to The Tax Court of the United States.**]¹ If the Commissioner determines that there is a deficiency in respect of the tax.

imposed by this subchapter, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with The Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this subchapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. If the notice is addressed to an executor outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

(2) Cross references

For exceptions to the restrictions imposed by this subsection see—

Subsection (d) of this section, relating to waivers by the executor;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return.

Section 872, relating to jeopardy assessments; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Tax Court pending court review.

[(b) Collection of deficiency found by Tax Court.]¹ If the executor files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) Failure to file petition. If the executor does not file a petition with the Tax Court within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) Waiver of restrictions. The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Increase of deficiency after notice mailed. The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) Further deficiency letters restricted. If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Tax Court within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872(c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection

tion or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with The Tax Court of the United States based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

[(g) **Final decisions of Tax Court.**]¹ For the purposes of this subchapter the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 1140.

(h) **Extension of time for payment of deficiency.** Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

(i) **50 per cent addition treated as deficiency.** The 50 per centum addition to the tax provided by section 3612(d) (2) shall, when assessed in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 891 shall not be applicable. 53 Stat. 132, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 413(a), Title V, § 504(a, c), 56 Stat. 951, 957; Dec. 29, 1945, c. 652, Title II, § 203(a), 59 Stat. 673.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1945 Amendment. Subsec. (a) (1) amended by Act Dec. 29, 1945, which inserted "Saturday," preceding "Sunday" within parenthesis in second sentence.

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942, § 413(a), which added last sentence thereto.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Effective Date of 1945 Amendment. Act Dec. 29, 1945, § 203(a), was made ef-

fective as of Sept. 8, 1945, by section 203 (b) thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, § 413(a), was made applicable to notices of deficiency mailed after Oct. 21, 1942, 4:30 p. m., E. W. T.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26-Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Dec. 29, 1945, see 1945 U.S.Code Cong.Service, p. 946.

§ 872. Jeopardy assessments

(a) **Authority for making.** If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **Deficiency letters.** If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 871(a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

[(c) Amount assessable before decision of Tax Court.]¹ The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of section 871(f) and whether or not the executor has theretofore filed a petition with The Tax Court of the United States. The Commissioner may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

[(d) Amount assessable after decision of Tax Court.]¹ If the jeopardy assessment is made after the decision of the Tax Court is rendered such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the executor has filed a petition for review of the decision of the Tax Court.

(f) Bond to stay collection. When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Tax Court which has become final, together with interest thereon as provided in section 892 or 893(b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Tax Court is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) Same—further conditions. If the bond is given before the executor has filed his petition with the Tax Court under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) Waiver of stay. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) Collection of unpaid amounts. When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand

from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) **Abatement if jeopardy does not exist.** The Secretary may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of The Tax Court of the United States in respect of the deficiency has been rendered or, if no petition is filed with The Tax Court of the United States, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated. 53 Stat. 133, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; Aug. 14, 1953, c. 488, § 1(b), 67 Stat. 583.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1953 Amendment. Subsec. (j) added by Act Aug. 14, 1953.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1160 of I.R.C.1939 and notes thereunder.

Effective Date of 1953 Amendment. Section 1(c) of Act Aug. 14, 1953, provided that the amendments to this section by said Act should be applicable to

jeopardy assessments made or in existence on Aug. 14, 1953 or which are thereafter made.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26-Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 14, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2398.

§ 873. Claims in abatement

No claim in abatement shall be filed in respect of the assessment of any estate tax imposed by this subchapter. 53 Stat. 135.

§ 874. Period of limitation upon assessment and collection

(a) **General rule.** Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) Exceptions

(1) **False return or no return.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) **Collection after assessment.** Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(3) **Recovery of taxes claimed as credit.** If any tax claimed as a credit under section 813(b) or (c) or section 936(c) is recovered from any foreign country, any State, any Territory or possession of the United States, or the District of Columbia, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary at such time and in such manner as may be required by regulations prescribed by him, and the Secretary shall redetermine the amount of the tax under this chapter and the amount, if any, of the tax due upon such redetermination, shall be paid by the executor or such person or persons, as the case may be, upon notice and demand. 53 Stat. 135, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 603(d), 65 Stat. 566.

Historical Note

1951 Amendment. Subsec. (b) (3) added by Act Oct. 20, 1951.

Effective Date of 1951 Amendment. Amendment by Act Oct. 20, 1951 as applicable with respect to estates of decedents dying after Oct. 20, 1951, see note under section 813 of I.R.C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951]

shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26-Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 875. Suspension of running of statute

The running of the statute of limitations provided in section 874 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 871(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter. 53 Stat. 135, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26-Internal Revenue Acts".

§ 876. Cross reference

For collection of unpaid deficiencies under provisions of general law and sale of property under judgment, see section 826(a). 53 Stat. 135.

Supplement B.—Interest, Additions to the Tax, and Penalties

§ 890. Interest on extended payments

(a) **Tax shown on return.** If the time for the payment is extended as provided in section 822(a) (2) there shall be collected, as a part of such amount, interest thereon from the expiration of three months after the due date of the tax to the expiration of the period of the extension. In the case of any such extension, the rate of interest shall be 4 per centum per annum.

(b) **Deficiency.** In case an extension for the payment of a deficiency is granted, as provided in section 871(h), there shall be collected, as a

part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. 53 Stat. 135.

§ 891. Interest on deficiencies

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under section 871(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. 53 Stat. 135.

§ 892. Interest on jeopardy assessments

In the case of the amount collected under section 872(i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 872(i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 891. 53 Stat. 136.

§ 893. Additions to the tax in case of nonpayment

(a) Tax shown on return

(1) **Payment not extended.** Where the amount determined by the executor as the tax imposed by this subchapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

(2) **Payment extended.** Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 890(a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency

(1) **Payment not extended.** Where a deficiency, or any interest assessed in connection therewith under section 891, or any addition to the tax provided for in section 3612(d), is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(2) **Filing of jeopardy bond.** If a bond is filed, as provided in section 872, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) **Payment extended.** If the part of the deficiency the time for payment of which is extended as provided in section 871(h) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) **Jeopardy assessment—Payment stayed by bond.** If the amount included in the notice and demand from the collector under section 872(i)

is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. 53 Stat. 136.

§ 894. Penalties

(a) Ad valorem

Failure to file return.—For addition to the tax for failure to file return, see section 3612(d) (1).

False or fraudulent return.—For 50 per centum addition to the tax in case of a false or fraudulent return, see section 3612(d) (2).

(b) Specific

(1) Civil. Whoever fails to comply with any duty imposed upon him by section 820, 821, or 864, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this subchapter, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

(2) Criminal

(A) Whoever knowingly makes any false statement in any notice or return required to be filed under this subchapter shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(B) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(C) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(D) The term "person" as used in paragraphs (B) and (C) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(3) Cross reference

For other penalties of a general character, see section 3793.
53 Stat. 136.

§ 895. Cross reference

For interest on refunds, see section 3771.
53 Stat. 137.

*Supplement C—Claims against Transferees and Fiduciaries***§ 900. Transferred assets**

(a) **Method of collection.** The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **Transferees.** The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

(2) **Fiduciaries.** The liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of the payment of any such tax from the estate of the decedent.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.** The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor.

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period provided in paragraph (1)—then within one year after return of execution in such proceeding.

(c) **Suspension of running of statute of limitations.** The running of the statute of limitations, upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 871 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(d) **Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.** No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of any such tax.

(e) **Definition of "transferee".** As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee, and includes a person who, under section 827(b), is personally liable for any part of the tax. 53 Stat. 137, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 411(b), Title V, § 504(a, c), 56 Stat. 950, 957.

Historical Note

1942 Amendment. Subsec. (e) amended by Act Oct. 21, 1942, § 411(b), which added "and includes * * * of the tax," following "distributee".

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the

Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable

to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 901. Notice of fiduciary relationship

(a) **Fiduciary of decedent.** Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of the tax imposed by this subchapter until notice is given that such person is no longer acting as executor.

(b) **Fiduciary of transferee.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 900, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.** Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) **Address for notice of liability.** In the absence of any notice to the Commissioner under subsection (a) or (b), notice under this subchapter of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this subchapter. 53 Stat. 138.

Supplement D—Refunds

§ 910. Period of limitation for filing claims

All claims for the refunding of the tax imposed by this subchapter alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund. 53 Stat. 138.

[§ 911. Effect of petition to Tax Court] ¹

If the Commissioner has mailed to the executor a notice of deficiency under section 871(a) and if the executor files a petition with The Tax Court of the United States within the time prescribed in such subsection, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(a) As to overpayments determined by a decision of the Tax Court which has become final; and

(b) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(c) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be

conclusive. 53 Stat. 139, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

[§ 912. Overpayment found by Tax Court] ¹

If the Tax Court finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the executor as provided in section 3770(a). No such refund shall be made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid within three years before the filing of the claim or the mailing of the notice of deficiency, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency. 53 Stat. 139, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 415, Title V, § 504(a), (c), 56 Stat. 951, 957.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1942 Amendment. Section amended by Act Oct. 21, 1942, § 415, by striking out "or the filing of the petition" and inserting in lieu thereof "or the mailing of the notice of deficiency".

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, § 415, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 913. Cross references

For other provisions affecting refunds of estate taxes, see—

Section 3770(a) (1), Authority of Commissioner to make refunds.

Section 3772, Limitations on suits for refunds.

Section 3770(a) (2), Refund of amounts collected after period of limitation.

Section 3743, Recovery of amounts erroneously refunded.

Section 3760, Closing agreements.

Section 3771, Interest on refunds.

53 Stat. 139.

Supplement E.—Estates in China

§ 920. Payment of tax

In the case of a resident within the meaning of section 851—

(a) To clerk of United States Court for China. Where no part of the gross estate of the decedent is situated in the United States at the time of his death, the total amount of tax due under this subchapter shall be paid to or collected by the clerk of the United States Court for China;

(b) To collector. Where any part of the gross estate of the decedent is situated in the United States at the time of his death, the tax due under this subchapter shall be paid to or collected by the collector of the dis-

strict in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner. 53 Stat. 139.

Historical Note

References in Text. "United States Court for China", referred to in text, was rendered inoperative by the Treaty of Jan. 11, 1943, between the United States and China, 57 Stat., Part II, 767, by which the United States relinquished extraterritorial rights in China.

§ 921. Authority of clerk of United States Court for China to act as collector

For the purpose of section 920 the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States. 53 Stat. 139.

Historical Note

References in Text. "United States Court for China," referred to in text, was rendered inoperative by the Treaty of Jan. 11, 1943, between the United States and China, 57 Stat., Part II, 767, by which the United States relinquished extraterritorial rights in China.

Supplement F.—Extension of Payment in Case of Future Interests

§ 925. Period of extension

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. 53 Stat. 140.

§ 926. Requirements for extension

The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as provided in section 925. 53 Stat. 140.

§ 927. Credit for death taxes

Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 813(b) or (c) against the tax imposed by this subchapter, or under section 936(c) against the tax imposed by subchapter B, as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of credit contained in such sections, if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property. 53 Stat. 140, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 603(c), 65 Stat. 566.

Historical Note

1951 Amendment. Act Oct. 20, 1951 amended section by inserting the references to sections 813(b) and (c) and 938 (c), and to subchapter B, and by substituting "subject to the limitations on the amount of credit contained in such sections" in lieu of "subject to the percentage limitation contained in section 813(b)".

Effective Date of 1951 Amendment. Amendment by Act Oct. 20, 1951 as applicable with respect to estates of decedents dying after Oct. 20, 1951, see note under section 813 of I.R.C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

Supplement G.—Definitions

§ 930. "Executor," "net estate," "month," "collector."

When used in this subchapter—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 812 or 861;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner. 53 Stat. 140.

§ 931. Cross references

(a) "Transferee."

For definition of "transferee," see section 900(e).

(b) "Resident."

For "resident" as including citizen with estate in China, see section 851, 53 Stat. 140.

SUBCHAPTER B—ADDITIONAL ESTATE TAX

§ 935. Rate of tax

(a) In addition to the estate tax imposed by section 810 or 860, there shall be imposed upon the transfer of the net estate of every decedent dying after the date of the enactment of this title, whether a citizen or resident of the United States or a nonresident not a citizen of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 810, in the case of a citizen or resident of the United States, or 860, in the case of a nonresident not a citizen of the United States, computed without regard to the provisions of this subchapter.

§ 935

ESTATE TAX—BASIC TAX

(b) The tentative tax referred to in subsection (a) (1) of this section shall be the tentative tax shown in the following table:

If the net estate is:

The tentative tax shall be:

Not over \$5,000	3% of the net estate.
Over \$5,000 but not over \$10,000.	\$150, plus 7% of excess over \$5,000.
Over \$10,000 but not over \$20,000.	\$500, plus 11% of excess over \$10,000.
Over \$20,000 but not over \$30,000.	\$1,600, plus 14% of excess over \$20,000.
Over \$30,000 but not over \$40,000.	\$3,000, plus 18% of excess over \$30,000.
Over \$40,000 but not over \$50,000.	\$4,800, plus 22% of excess over \$40,000.
Over \$50,000 but not over \$60,000.	\$7,000, plus 25% of excess over \$50,000.
Over \$60,000 but not over \$100,000.	\$9,500, plus 28% of excess over \$60,000.
Over \$100,000 but not over \$250,000.	\$20,700, plus 30% of excess over \$100,000.
Over \$250,000 but not over \$500,000.	\$65,700, plus 32% of excess over \$250,000.
Over \$500,000 but not over \$750,000.	\$145,700, plus 35% of excess over \$500,000.
Over \$750,000 but not over \$1,000,000.	\$233,200, plus 37% of excess over \$750,000.
Over \$1,000,000 but not over \$1,250,000.	\$325,700, plus 39% of excess over \$1,000,000.
Over \$1,250,000 but not over \$1,500,000.	\$423,200, plus 42% of excess over \$1,250,000.
Over \$1,500,000 but not over \$2,000,000.	\$528,200 plus 45% of excess over \$1,500,000.
Over \$2,000,000 but not over \$2,500,000.	\$753,200, plus 49% of excess over \$2,000,000.
Over \$2,500,000 but not over \$3,000,000.	\$998,200, plus 53% of excess over \$2,500,000.
Over \$3,000,000 but not over \$3,500,000.	\$1,263,200, plus 56% of excess over \$3,000,000.
Over \$3,500,000 but not over \$4,000,000.	\$1,543,200, plus 59% of excess over \$3,500,000.
Over \$4,000,000 but not over \$5,000,000.	\$1,838,200, plus 63% of excess over \$4,000,000.
Over \$5,000,000 but not over \$6,000,000.	\$2,468,200, plus 67% of excess over \$5,000,000.
Over \$6,000,000 but not over \$7,000,000.	\$3,138,200, plus 70% of excess over \$6,000,000.
Over \$7,000,000 but not over \$8,000,000.	\$3,838,200, plus 73% of excess over \$7,000,000.
Over \$8,000,000 but not over \$10,000,000.	\$4,568,200, plus 76% of excess over \$8,000,000.
Over \$10,000,000	\$6,088,200, plus 77% of excess over \$10,000,000.

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$60,000. 53 Stat. 141, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title IV, § 401(a), 55 Stat. 704; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 414(a), 56 Stat. 951.

Historical Note

1942 Amendment. Subsec. (c) amended by Act Oct. 21, 1942, which substituted "\$60,000" for "\$40,000."

1941 Amendment. Subsec. (b) amended generally by Act Sept. 20, 1941.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to estates of decedents dying after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 401 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective only with respect to estates of decedents dying after the date of enactment of that Act, by section 401(c) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 936. Credits against tax

(a) The credit provided in section 813(b) (80 per centum credit), shall not be allowed in respect of such additional tax.

(b) (1) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 935 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812, and (B) shall not exceed the amount by which the gift tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 813(a) (2).

(2) In applying, with respect to any gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(A) by such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

(B) if a deduction with respect to such gift is allowed under section 812(e) (the so-called "marital deduction")—then by an amount which bears the same ratio to such value (reduced as provided in subparagraph (A) of this paragraph) as the aggregate amount of the marital deductions allowed under section 812(e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812(e) (1); and

(C) if a deduction with respect to such gift is allowed under section 812(d) (the so-called "charitable deduction")—then by the amount of such value, reduced as provided in subparagraph (A) of this paragraph.

(3) Where the decedent was the donor of the gift but, under the provisions of section 1000(f), the gift was considered as made one-half by his spouse—

(A) the term "the amount of the tax paid under chapter 4", as used in paragraph (1) of this subsection, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in paragraph (4); and

(B) in applying, with respect to such gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in subparagraph (A) of paragraph (2).

(4) (A) For the purposes of paragraph (1), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(B) For the purposes of subparagraph (A) the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004(a) (2), or under section 505(a) (2) of the Revenue Act of 1932 (the so-called "charitable deduction"), or under section 1004 (a) (3) (the so-called "marital deduction").

(c) Estate, etc., taxes paid to foreign countries

(1) In general. In the case of the estate of a citizen or resident of the United States, the tax imposed by section 935 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). If the decedent at the time of his death was not a citizen of the United States, credit shall not be allowed under this subsection unless the foreign country of which such decedent was a citizen or subject, in imposing such taxes, allows a similar credit in the case of a citizen of the United States resident in such country. The determination of the country within which property is situated shall be made in accordance with the rules applicable under Part III of subchapter A in determining whether property is situated within or without the United States.

(2) Limitations on credit. The credit provided in this subsection with respect to such taxes paid to any foreign country—

(A) shall not exceed the amount by which such taxes paid to the foreign country exceed the amount of the credit allowed therefor under section 813(c); and

(B) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 (after deducting from such tax the credit provided by subsection (b) of this section) as the value of property which is—

(i) situated within such foreign country,

(ii) subjected to the taxes of such foreign country, and

(iii) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under subsections (c), (d), and (e) of section 812.

(3) Same—special rules

(A) For the purposes of paragraph (2) (A), "such taxes paid to the foreign country" shall, with respect to any tax paid to the foreign country, be the amount computed under section 813 (c) (2) (A).

(B) The values referred to in the ratio stated in paragraph (2) (B) are the values determined under this chapter; but, in applying such ratio, the value of any property described in clauses (i), (ii), and (iii) thereof shall be reduced by such

amount as will properly reflect, in accordance with regulations prescribed by the Secretary, the deductions allowed in respect of such property under subsections (c), (d), and (e) of section 812.

(4) Proof of credit

For provisions relating to proof of credit, see section 813(c) (4).

(5) Period of limitation

For provisions relating to period of limitation on claiming of credit or refund based thereon and nonpayment of interest on refund, see section 813(c) (5). 53 Stat. 142, amended May 17, 1941, c. 21, § 1, 55 Stat. 45; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, § 363(c), (d), 62 Stat. 122; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 603(b), 65 Stat. 565.

Historical Note

1951 Amendment. Subsec. (c) added by Act Oct. 20, 1951.

1948 Amendment. Subsec. (b) (1) amended by Act Apr. 2, 1948, § 363(c) which inserted in clause A after "entire gross estate" the words "reduced by the aggregate * * * of section 812" to allow a larger credit for the gift tax in certain instances.

Subsec. (b) (2)-(4) amended by Act Apr. 2, 1948, § 363(d), to give effect in computing the credit for the gift tax to the estate—and gift tax provisions for a marital deduction under sections 812(e) and 1004(a) (3) of I.R.C.1939 and to the gift tax provisions for splitting of gifts of spouses to third parties under section 1000(f) of I.R.C.1939.

1941 Amendment. Subsec. (b) amended by Joint Res. Mar. 17, 1941.

Effective Date of 1951 Amendment. Amendment by Act Oct. 20, 1951 as applicable with respect to estates of decedents dying after Oct. 20, 1951, see note under section 813 of I.R.C.1939.

Effective Date of 1948 Amendment. Section 363(e) of Act Apr. 2, 1948, provided that amendments to sections 813 and 936 by section 363(a)-(d) of said Act

Apr. 2, 1948, should be applicable only with respect to the estates of decedents dying after Dec. 31, 1947.

Effective Date of 1941 Amendment. Section 2 of Joint Res. Mar. 17, 1941 provided that this section as amended by said Joint Res. Mar. 17, 1941 should have effect as if enacted in the Internal Revenue Code on Feb. 10, 1939. Section 3 of Act Feb. 10, 1939, c. 2, 53 Stat. 1 provided that, except as otherwise provided, this title [I.R.C.1939] should take effect on Feb. 11, 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Act Apr. 2, 1948, see 1948 U.S. Code Cong.Service, p. 1163.

§ 937. Assessment, collection, and payment of tax

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c). 53 Stat. 143.

§ 938. Publicity of returns

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55. 53 Stat. 143.

§ 939. Certain members of the armed forces

(a) Deaths after December 6, 1941, and before January 1, 1947. The tax imposed by section 935 shall not apply to the transfer of the net estate of a citizen or resident of the United States dying on or after December

7, 1941, and before January 1, 1947, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations if such decedent—

(1) was killed in action; or

(2) died as a result of wounds or other injuries, or of disease, suffered while in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service.

(b) **Deaths after June 24, 1950, and before January 1, 1955.** The tax imposed by section 935 shall not apply to the transfer of the net estate of a citizen or resident of the United States dying after June 24, 1950, and before January 1, 1955, while in active service as a member of the armed forces of the United States, if such decedent—

(1) was killed in action while serving in a combat zone, as determined under section 22(b) (13); or

(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 22(b) (13)) and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service. Added Oct. 25, 1949, c. 720, § 10(a), 63 Stat. 896, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 606, 65 Stat. 567; Aug. 15, 1953, c. 512, Title I, § 106, 67 Stat. 616.

Historical Note

1953 Amendment. Subsec. (b) amended by Act Aug. 15, 1953 which extended for one year, until January 1, 1955, the exemption from the additional estate tax provided for members of the Armed Forces who die as the result of service in a combat zone.

1951 Amendment. Act Oct. 20, 1951 amended section by inserting the catchline to subsec. (a), and by adding subsec. (b).

Refunds of Overpayments. Section 10 (b) of Act Oct. 25, 1949, as amended by Act May 17, 1951, c. 92, 65 Stat. 43, provided that: "If the refund of any overpayment resulting from the application of this section is prevented on the date of the enactment of this Act [Oct. 25, 1949], or at any time prior to January 1, 1952, by the operation of any law or rule of law (other than section 3761 of the Internal Revenue Code, [1939] relating to compromises), refund of such overpay-

ment may, nevertheless, be made if claim therefor is filed prior to January 1, 1952 [Oct. 25, 1949]. No interest shall be paid on any overpayment resulting from the application of this section."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423. See, also, Act Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781.

SUBCHAPTER C.—DEFENSE TAX FOR FIVE YEARS

Historical Note

This subchapter, consisting of section 951, was added by Act June 25, 1940, c. 419, Title II, § 206, 54 Stat. 521. It was repealed by Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title IV, § 401(b), 55 Stat.

705, which was made effective only with respect to estates of decedents dying after the date of enactment of that Act, by section 401(c) thereof.

§ 951. Repealed. Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title IV, § 401(b), 55 Stat. 705

Historical Note

Section, relating to defense tax for five years, was added by Act June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 206, 54 Stat. 521.

Effective Date of Repeal. Act Sept. 20, 1941, repealing this section, was made effective only with respect to estates of decedents dying after the date of enactment of that Act, by section 401(c) thereof.

CHAPTER 4.—GIFT TAX

Sec.

- 1000. Imposition of tax.
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§ 1000. Imposition of tax

(a) [Transfers subject to tax; certain gifts not affected].¹ For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. Gift taxes for the calendar years 1932–1939, inclusive, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1932, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1932.

(b) [Method of transfer; nonresident transfers.]¹ The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. In the case of such a nonresident who is not engaged in business in the United States at the time of a transfer of obligations issued by the United States, the tax shall apply in respect of any such obligations only if issued on or after March 1, 1941.

(c) Powers of Appointment.

(1) Exercise of general power of appointment created on or before October 21, 1942. An exercise of a general power of appointment created

on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

If before November 1, 1951, or within the time limited by paragraph (2) of section 452(b) of the Revenue Act of 1942, as amended, in cases to which such paragraph is applicable, a general power of appointment created on or before October 21, 1942, shall have been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment.

(2) **Powers created after October 21, 1942.** The exercise of a general power of appointment created after October 21, 1942, or the release after May 31, 1951, of such a power, shall be deemed a transfer of property by the individual possessing such power. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.

(3) **Definition of general power of appointment.** For the purposes of this subsection the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this paragraph referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(i) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(ii) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(iii) if (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For the purposes of clauses (ii) and (iii) a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(4) **Creation of another power in certain cases.** If a power of appointment created after October 21, 1942, is exercised by creating another

power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(5) **Lapse of power.** The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(A) \$5,000, or

(B) 5 per centum of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(d) **Community property.** All gifts of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country shall be considered to be the gifts of the husband except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from separate property of the wife shall be considered to be gifts of the wife. This subsection shall be applicable only to gifts made after the calendar year 1942 and on or before the date of the enactment of the Revenue Act of 1948.

(e) **Certain discretionary trusts.** In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to revest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1940, and on or before December 31, 1947 (or on a later date in any case where it is shown to the satisfaction of the Commissioner, in accordance with regulations prescribed by him with the approval of the Secretary, that failure to relinquish prior to such later date was for reasonable cause) of power or control with respect to the distribution of such property or the income therefrom by an exercise or other termination of such power or control shall not be deemed a transfer of property for the purposes of this chapter. If such property was transferred in trust, the grantor not retaining such power to revest title thereto in himself, or if such power to revest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid with respect to such transfer or relinquishment, and not credited or refunded, or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this chapter to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this chapter. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power

or control with respect to the future disposition of income from the trust property.

(f) Gift of husband or wife to third party

(1) Considered as made one-half by each

(A) In general. A gift made after the date of the enactment of the Revenue Act of 1948 by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This subparagraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a power of appointment, as defined in subsection (c) of this section, over such interest. For the purposes of this subsection an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(B) Consent of both spouses. Subparagraph (A) shall be applicable only if both spouses have signified (in accordance with the regulations provided for in paragraph (2)) their consent to the application of subparagraph (A) in the case of all such gifts made during the calendar year by either while married to the other.

(2) Manner and time of signifying consent

(A) Manner. A consent under this subsection shall be signified in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary.

(B) Time. Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations—

(i) the consent may not be signified after the 15th day of March following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse;

(ii) the consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 1012(a).

(3) Revocation of consent. Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

(A) shall not exist after the 15th day of March following the close of such year if the consent was signified on or before such 15th day; and

(B) shall not exist if the consent was not signified until after such 15th day.

(4) Joint and several liability for tax. If the consent required by paragraph (1) (B) is signified with respect to a gift made in any calendar year the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

(g) Certain reciprocal trusts. In the case of property in a trust created prior to January 1, 1940, if and to the extent that such property may be deemed to have been transferred to such trust by a person other than the nominal grantor of such property (by reason of the fact that such person has made a reciprocal transfer of property in trust), then a relinquishment by such person on or before December 31, 1950, of any power over such property or over the income therefrom shall not be deemed a transfer of property for the purposes of this chapter. In the event of such relinquishment, the reciprocal transfer made by the person relinquishing

such power shall be deemed, for the purposes of this chapter, to have been a completed gift at the time such reciprocal transfer was made. This subsection shall apply only if, at the time such person made the aforesaid reciprocal transfer of property, a law was in effect imposing a tax upon the transfer of property by gift and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded. 53 Stat. 144, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, §§ 452(a), 453, 56 Stat. 952, 953; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 502 (a), 58 Stat. 71; June 25, 1947, c. 143, § 2(a), 61 Stat. 178; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, §§ 371, 374, 62 Stat. 125, 127; Oct. 25, 1949, c. 720, § 6(a), 63 Stat. 893; June 28, 1951, c. 165, § 3(a), 65 Stat. 93; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 604(b), 65 Stat. 566.

1 Subsection enacted without a catchline which has been supplied by the Editor.

Historical Note

References in Text. Date of the enactment of Revenue Act of 1948, referred to in subsecs. (d) and (f) (1) (A), was 3:18 p. m., E.S.T., Apr. 2, 1948.

1951 Amendments. Subsec. (b) amended by Act Oct. 20, 1951, which added second sentence.

Subsec. (c) amended generally by Act June 28, 1951, to restore the law regarding preexisting powers of appointment as it was prior to the amendment of subsec. by Act Oct. 21, 1942; to provide that if a general power of appointment is partially released before Nov. 1, 1951, so that it is no longer a general power, a subsequent exercise of such power shall not be deemed the exercise of a general power; to deal with future powers created after enactment of said Act Oct. 21, 1942; to redefine a general power of appointment; to provide for successive powers of appointment; and to provide for the failure to exercise a power.

1949 Amendment. Subsec. (g) added by Act Oct. 25, 1949.

1948 Amendment. Subsec. (d) amended by Act Apr. 2, 1948, § 371, which added last sentence to make subsec. applicable only to gifts made after 1942 and prior to Apr. 2, 1948.

Subsec. (f) added by Act Apr. 2, 1948, § 374, which provides for the splitting between spouses of gifts made to third parties.

1947 Amendment. Subsec. (e) amended by Act June 25, 1947, which extended time for tax-free relinquishment of certain powers to Dec. 31, 1947, and inserted provision authorizing Commissioner to promulgate regulations with regard to reasonable cause for failure to relinquish.

1944 Amendment. Subsec. (e) added by Act Feb. 25, 1944.

1942 Amendment. Subsecs. (c) and (d) added by Act Oct. 21, 1942.

Effective Date of 1951 Amendments. Section 604(b) of Act Oct. 20, 1951 also provided that the amendment of this section by such section 604(b) should be

effective with respect to gifts made after the date of enactment of said Act (Oct. 20, 1951).

The amendment of subsec. (c) by section 3(a) of Act June 28, 1951, is made effective as if made by section 452(a) of Act Oct. 21, 1942, on Oct. 21, 1942 (applicable with respect to gifts made in the calendar year 1943 and succeeding calendar years) by section 3(c) of said Act June 28, 1951.

Effective Date of 1942 Amendment. Amendment adding subsec. (c) by Act Oct. 21, 1942, § 452(a), was limited in its application by section 452(b) thereof as follows:

"(1) The amendments made by this section shall not apply with respect to a power to appoint, created on or before the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.], which is other than a power exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, unless such power is exercised after the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.].

"(2) The amendments made by this section shall not become applicable with respect to a power to appoint created on or before the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.], which is exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, if at such date the donee of such power is under a legal disability to release such power, until six months after the termination of such legal disability. For the purposes of the preceding sentence, an individual in the military or naval forces of the United States shall, until the termination of the present war, be considered under a legal disability to release a power to appoint."

Amendment adding subsec. (d) by Act Oct. 21, 1942, § 453, was made applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years, by section 451 thereof.

Short Title. Short title of Act June 28, 1951 which amended subsec. (c) of

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this section, see note under section 811 of I.R.C.1939.

Date of Creation of Power of Appointment. Section 3(b) of Act June 28, 1951, provided that: "For the purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1940, without having republished such will, by codicil or otherwise, after October 21, 1942."

Section 2 of Act June 12, 1948, c. 459, 62 Stat. 387, provided that: "For the purposes of sections 403 and 452 of the Revenue Act of 1942, [sections 811(f), 812(d), 828(d), 861(a) (3) and 1000f I.R.C.1939] a power to appoint created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1940, without having republished such will, by codicil or otherwise, after October 21, 1942."

Release of Power of Appointment. Section 452(c) of Act Oct. 21, 1942, as amended by Acts Dec. 17, 1942, c. 740, 56 Stat. 1054; June 9, 1943, 7 p. m. E.W.T., c. 120, § 10, 57 Stat. 150; Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title V, § 505, 58 Stat. 72; Dec. 20, 1944, c. 616, § 1, 58 Stat. 830; June 29, 1945, c. 200, § 1, 59 Stat. 264; May 29, 1946, c. 278, 60 Stat. 229; June 25, 1947, c. 143, § 1, 61 Stat. 178; June 12, 1948, c. 459, § 1, 62 Stat. 387; June 28, 1949, c. 268, § 1, 63 Stat. 280; June 27, 1950, c. 371, 64 Stat. 290, provided that:

"(c) Release Before July 1, 1951.—

"(1) A release of a power to appoint before July 1, 1951 shall not be deemed a transfer of property by the individual possessing such power.

"(2) This subsection shall apply to all calendar years prior to 1951 and to that part of the calendar year 1951 prior to July 1, 1951."

Relinquishment of Powers Relating to Reciprocal Trusts on or Before Dec. 31, 1950; Applicability to Estates of Dece-

dents Dying After Feb. 10, 1939. Section 6(c) of Act Oct. 25, 1949, provided that: "In the case of a decedent who relinquished on or before December 31, 1950, a power described in section 1000(g) of the Internal Revenue Code, such relinquishment shall, for the purposes of section 811(d) of such code, be deemed not to have been made in contemplation of the death of such decedent if such relinquishment, by virtue of the enactment of this section, is not deemed a transfer of property for the purposes of the gift tax. The provisions of this subsection shall be applicable with respect to estates of decedents dying after February 10, 1939."

Interest on Overpayments. Section 2 (b) of Act June 25, 1947, provided: "If any amount paid prior to the date of the enactment of this joint resolution [Act June 25, 1947] constitutes an overpayment of gift tax solely by reason of the amendment made by this section [section 2(a) of Act June 25, 1947] no interest shall be allowed or paid with respect to the amount of such overpayment."

Section 502(c) of Act Feb. 25, 1944, provided as follows: "No interest shall be allowed or paid on any overpayment resulting from the application of this section."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Acts June 28, 1951, 1951 U.S.Code Cong.Service, p. 1530; Apr. 2, 1948, 1948 U.S.Code Cong.Service, p. 1163; June 25, 1947, 1947 U.S.Code Cong Service, p. 1211.

§ 1001. Computation of tax

(a) The tax for each calendar year shall be an amount equal to the excess of—

(1) a tax, computed in accordance with the Rate Schedule hereinafter set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

(2) a tax, computed in accordance with the said Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

Rate Schedule

If the net gifts are:

Not over \$5,000
Over \$5,000 but not over \$10,000.
Over \$10,000 but not over \$20,000.
Over \$20,000 but not over \$30,000.
Over \$30,000 but not over \$40,000.
Over \$40,000 but not over \$50,000.
Over \$50,000 but not over \$60,000.
Over \$60,000 but not over \$100,000.
Over \$100,000 but not over \$250,000.
Over \$250,000 but not over \$500,000.
Over \$500,000 but not over \$750,000.
Over \$750,000 but not over \$1,000,000.
Over \$1,000,000 but not over \$1,250,000.
Over \$1,250,000 but not over \$1,500,000.
Over \$1,500,000 but not over \$2,000,000.
Over \$2,000,000 but not over \$2,500,000.
Over \$2,500,000 but not over \$3,000,000.
Over \$3,000,000 but not over \$3,500,000.
Over \$3,500,000 but not over \$4,000,000.
Over \$4,000,000 but not over \$5,000,000.
Over \$5,000,000 but not over \$6,000,000.
Over \$6,000,000 but not over \$7,000,000.
Over \$7,000,000 but not over \$8,000,000.
Over \$8,000,000 but not over \$10,000,000.
Over \$10,000,000

The tax shall be:

2¼ % of the net gifts.
\$112.50, plus 5¼ % of excess over \$5,000.
\$375, plus 8¼ % of excess over \$10,000.
\$1,200, plus 10½ % of excess over \$20,000.
\$2,250, plus 13½ % of excess over \$30,000.
\$3,600, plus 16½ % of excess over \$40,000.
\$5,250, plus 18¾ % of excess over \$50,000.
\$7,125, plus 21 % of excess over \$60,000.
\$15,525, plus 22½ % of excess over \$100,000.
\$49,275, plus 24 % of excess over \$250,000.
\$109,275, plus 26¼ % of excess over \$500,000.
\$174,900, plus 27¾ % of excess over \$750,000.
\$244,275, plus 29¼ % of excess over \$1,000,000.
\$317,400, plus 31½ % of excess over \$1,250,000.
\$396,150, plus 33¾ % of excess over \$1,500,000.
\$564,900, plus 36¾ % of excess over \$2,000,000.
\$748,650, plus 39¾ % of excess over \$2,500,000.
\$947,400, plus 42 % of excess over \$3,000,000.
\$1,157,400, plus 44¼ % of excess over \$3,500,000.
\$1,378,650, plus 47¼ % of excess over \$4,000,000.
\$1,851,150, plus 50¼ % of excess over \$5,000,000.
\$2,353,650, plus 52½ % of excess over \$6,000,000.
\$2,878,650, plus 54¾ % of excess over \$7,000,000.
\$3,426,150, plus 57 % of excess over \$8,000,000.
\$4,566,150, plus 57¾ % of excess over \$10,000,000.

(b) For the purpose of this section the term "preceding calendar years" means the calendar year 1932 and all calendar years intervening between the calendar year 1932 and the calendar year for which the tax is being computed.

(c) Cross reference

For definition of "calendar year", see section 1030(a).

(d) Repealed. Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title IV, § 402(c), 55 Stat. 706.

53 Stat. 144, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 207, 54 Stat. 521; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title IV, § 402(a, c), 55 Stat. 705, 706.

Historical Note

1941 Amendment. The Rate Schedule following subsec. (a) amended by Act Sept. 20, 1941, § 402(a).

Subsec. (d), which related to defense tax for 1940-1945, was repealed by Act Sept. 20, 1941, § 402(c).

1940 Amendment. Subsec. (d) added by Act June 25, 1940.

Effective Date of 1941 Amendment. Section 402(b) of Act Sept. 20, 1941, provided as follows: "The amendments made by this section shall be applied in computing the tax for the calendar year

1942 and each calendar year thereafter (but not the tax for the calendar year 1941 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1941 and previous calendar years for the purpose of computing the tax for the calendar year 1942 and any calendar year thereafter."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1002. Transfer for less than adequate and full consideration

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year. 53 Stat. 146.

§ 1003. Net gifts

(a) **General definition.** The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 1004.

(b) Exclusions from gifts

(1) **Gifts prior to 1939.** In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year 1938 and previous calendar years, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(2) **Gifts after 1938 and prior to 1943.** In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years prior to 1943, the first \$4,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(3) **Gifts after 1942.** In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1943 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year. 53 Stat. 146, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 454, 56 Stat. 953.

Historical Note

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942, which inserted "prior to 1943" in par. (2) and added par. (3).

Effective Date of 1942 Amendment. Section 451 of Act Oct. 21, 1942, was made applicable only with respect to gifts made in the calendar year 1943, and suc-

ceeding calendar years, by section 451 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1004. Deductions

In computing net gifts for the calendar year 1942 and preceding calendar years, there shall be allowed (except as otherwise provided in paragraph (1) of subsection (a)) such deductions as are provided for under the gift tax laws applicable to the years in which the gifts were made.

In computing net gifts for the calendar year 1943 and subsequent calendar years, there shall be allowed as deductions:

(a) **Residents.** In the case of a citizen or resident—

(1) **Specific exemption.** An exemption of \$30,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years. This exemption shall be applied in all computations in respect of the calendar year 1942 and previous calendar years for the purpose of computing the tax for the calendar year 1943 or any calendar year thereafter.

(2) **Charitable, etc., gifts.** The amount of all gifts made during such year to or for the use of—

(A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(B) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this subparagraph, see sections 3813 and 162(g) (2);

(C) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(D) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(E) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U.S.C., title 38, § 440);

(F) the United Nations, but only if such gifts (i) are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and (ii) are made after December 1, 1946, and before December 2, 1947.

(3) **Gift to spouse**

(A) **In general.** Where the donor transfers during the calendar year (and after the date of the enactment of the Revenue Act of 1948) by gift an interest in property to a donee who at the time of the gift is the donor's spouse—an amount with respect to such interest equal to one-half of its value.

(B) **Life estate or other terminable interest.** Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(i) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(ii) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For the purposes of this clause the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for the purposes of clause (i) of this subparagraph, be considered as a transfer by him. Except as provided in subparagraph (E), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for the purposes of clause (i) of this subparagraph, be considered as transferred to a person other than the donee spouse.

(C) [Reduction of Certain Interests]¹ Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.

(D) Joint Interests. If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for the purposes of subparagraph (B) as an interest retained by the donor in himself.

(E) Trust with power of appointment in donee spouse. Where the donor transfers in trust an interest in property, if under the terms of the trust his spouse is entitled for life to all the income from the corpus of the trust, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire corpus free of the trust (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the donee spouse—

(i) the interest so transferred in trust shall, for the purposes of subparagraph (A), be considered as transferred to the donee spouse, and

(ii) no part of the interest so transferred in trust shall, for the purposes of subparagraph (B) (i), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the donee spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(F) Community property

(i) A deduction otherwise allowable under this paragraph shall be allowed only to the extent that the transfer can be shown to represent a gift of property which is not, at the time of the gift, held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country.

(ii) For the purposes of clause (i), community property (except property which is considered as community property solely by reason of the provisions of clause (iii)) shall not be considered as "held as community property" if the entire value of such property (and not merely one-half thereof) is treated as the amount of the gift.

(iii) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of clause (ii) as not so held) was by the donor and the donee spouse converted, by one transaction or a series of transactions, into separate property of the donor and such spouse (including any form of co-ownership by them), the separate property so acquired by the donor and any property acquired at any time by the donor in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clause (i), be considered as "held as community property."

(iv) Where the value (at the time of such conversion) of the separate property so acquired by the donor exceeded the value (at such time) of the separate property so acquired by such spouse, the rule in clause (iii) shall be applied only with respect to the same portion of such separate property of the donor as the portion which the value (as of such time) of such separate property so acquired by such spouse is of the value (as of such time) of the separate property so acquired by the donor.

(b) **Nonresidents.** In the case of a nonresident not a citizen of the United States, the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(6) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U.S.C., Title 38, § 440);

(7) the United Nations, but only if such gifts (A) are to be used exclusively for the acquisition of a site in the city of New York for its headquarters, and (B) are made after December 1, 1946, and before December 2, 1947.

For disallowance of certain charitable, etc., deductions otherwise allowable under paragraphs (2) and (3), see sections 3813 and 162(g) (2).

(c) **Extent of deductions.** The deductions provided in subsection (a) (2) or (3) or in subsection (b) shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied. 53 Stat. 146, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 455, 56 Stat. 953; Feb. 26, 1947, c. 7, §§ 3, 4, 61 Stat. 7; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title III, §§ 372, 373, 62 Stat. 125; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 332(g) (h), 64 Stat. 959.

1 Catchline supplied by the Editor.

Historical Note

References in Text. Date of enactment of Revenue Act of 1948 referred to in subsecs. (a) (3) (A) and (a) (3) (F) (iii), was 3:18 p. m., E. S. T., Apr. 2, 1948.

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, § 332(g), which substituted "legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this subparagraph, see sections 3813 and 162(g) (2)" in lieu of "legislation";

Subsec. (b) amended by Act Sept. 23, 1950, § 332(h), which added "For disallowance of certain * * * and 162(g) (2)."

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948, § 372, which added subdiv. (3) to provide a marital deduction in computing net gifts of citizens and residents of the United States.

Subsec. (c) amended by Act Apr. 2, 1948, § 373, which limits the marital deduction with respect to gifts to a spouse in any calendar year to the amount of such gifts included for the purpose of computing net gifts.

1947 Amendment. Subsec. (a) (2) (F) added by Act Feb. 26, 1947.

Subsec. (b) (7) added by Act Feb. 26, 1947.

1942 Amendment. Subsec. (a), all that preceded par. (2) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Section 451 of Act Oct. 21, 1942, was made applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years, by section 451 thereof.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053. See, also, Acts Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 1183; Feb. 26, 1947, 1947 U.S. Code Cong. Service, p. 956.

§ 1005. Gifts made in property

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. 53 Stat. 148.

§ 1006. Returns

(a) **Requirement.** Any individual who within the calendar year 1940 or any calendar year thereafter makes any transfers by gift (except those which under section 1003 are not to be included in the total amount of gifts for such year) shall make a return under oath in duplicate. The return shall set forth (1) each gift made during the calendar year which under section 1003 is to be included in computing net gifts; (2) the deductions claimed and allowable under section 1004; (3) the net gifts for

each of the preceding calendar years; and (4) such further information as may be required by regulations made pursuant to law.

(b) **Time and place for filing.** The return shall be filed on or before the 15th day of March following the close of the calendar year with the collector for the district in which is located the legal residence of the donor, or if he has no legal residence in the United States, then (unless the Commissioner designates another district) with the collector at Baltimore, Maryland. 53 Stat. 148.

§ 1007. Records and special returns

(a) **By donor.** Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **To determine liability to tax.** Whenever in the judgment of the Commissioner necessary¹ he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter. 53 Stat. 148.

¹ So in original.

§ 1008. Payment of tax

(a) **Time of payment.** The tax imposed by this chapter shall be paid by the donor on or before the 15th day of March following the close of the calendar year.

(b) **Extension of time for payment.** At the request of the donor, the Commissioner may extend the time for payment of the amount determined as the tax by the donor, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) **Voluntary advance payment.** A tax imposed by this chapter, may be paid, at the election of the donor, prior to the date prescribed for its payment.

(d) **Fractional parts of cent.** In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) **Receipts.** The collector to whom any payment of any gift tax is made shall, upon request, grant to the person making such payment a receipt therefor. 53 Stat. 148.

§ 1009. Lien for tax

The tax imposed by this chapter shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth. If the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all of the property from the lien herein imposed. 53 Stat. 149.

§ 1010. Examination of return and determination of tax

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. 53 Stat. 149.

§ 1011. Definition of deficiency

As used in this chapter in respect of the tax imposed by this chapter the term "deficiency" means—

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the donor upon his return, or if no return is made by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax. 53 Stat. 149.

§ 1012. Assessment and collection of deficiencies

[(a) (1) Petition to The Tax Court of the United States.]¹ If the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the donor by registered mail. Within 90 days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the donor may file a petition with The Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the donor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. If the notice is addressed to a donor outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

(2) Cross references

For exceptions to the restrictions imposed by this subsection see—

Subsection (d) of this section, relating to waivers by the donor;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

Section 1013, relating to jeopardy assessments;

Section 1015, relating to bankruptcy and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Tax Court pending court review.

[(b) Collection of deficiency found by Tax Court.]¹ If the donor files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) **Failure to file petition.** If the donor does not file a petition with the Tax Court within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the donor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) **Waiver of restrictions.** The donor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) **Increase of deficiency after notice mailed.** The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the donor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) **Further deficiency letters restricted.** If the Commissioner has mailed to the donor notice of a deficiency as provided in subsection (a) of this section, and the donor files a petition with the Tax Court within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same calendar year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Tax Court, or in section 1013(c), relating to the making of jeopardy assessments. If the donor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 1027(c), prohibiting credits or refunds after petition to The Tax Court of the United States) as a notice of a deficiency, and the donor shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) **Jurisdiction over other calendar years.** The Tax Court in redetermining a deficiency in respect of any calendar year shall consider such facts with relation to the taxes for other calendar years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other calendar year has been overpaid or underpaid.

[(h) **Final decisions of Tax Court.**]¹ For the purposes of this chapter the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 1140.

(i) **Extension of time for payment of deficiencies.** Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the donor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

(j) **Address for notice of deficiency.** In the absence of notice to the Commissioner under section 1026(a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the donor at his last known address, shall be sufficient for the purposes of this chapter even if such donor is deceased, or is under a legal disability. 53 Stat. 149, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 456(a), Title V, § 504(a), (c), 56 Stat. 953, 957; Dec. 29, 1945, c. 652, Title II, § 203(a), 59 Stat. 673.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1945 Amendment. Subsec. (a) (1) amended by Act Dec. 29, 1945, which inserted "Saturday" preceding "Sunday" within parenthesis in second sentence.

1942 Amendment. Subsec. (a) (1), last sentence, added by Act Oct. 21, 1942.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1945 Amendment. Amendment of subsec. (a) (1) by Act Dec. 29, 1945, § 203(a), was made effective

as of Sept. 8, 1945, by section 203(b) thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to notices of deficiency mailed after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 456(b) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Dec. 29, 1945, see 1945 U.S. Code Cong. Service, p. 946.

§ 1013. Jeopardy assessments

(a) **Authority for making.** If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **Deficiency letters.** If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 1012(a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

[(c) **Amount assessable before decision of Tax Court.]**¹ The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the donor, despite the provisions of section 1012(f) prohibiting the determination of additional deficiencies, and whether or not the donor has theretofore filed a petition with The Tax Court of the United States. The Commissioner may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

[(d) **Amount assessable after decision of Tax Court.]**¹ If the jeopardy assessment is made after the decision of the Tax Court is rendered such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) **Expiration of right to assess.** A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the donor has filed a petition for review of the decision of the Tax Court.

(f) **Bond to stay collection.** When a jeopardy assessment has been made the donor, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Tax Court which has become final, together with interest thereon as provided in section 1022 or 1023(b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Tax Court is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) **Same—Further conditions.** If the bond is given before the donor has filed his petition with the Tax Court under section 1012(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **Waiver of stay.** Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The donor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the donor, be proportionately reduced. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the donor, be proportionately reduced.

(i) **Collection of unpaid amounts.** When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded as provided in section 1027, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) **Abatement if jeopardy does not exist.** The Secretary may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of The Tax Court of the United States in respect of the deficiency has been rendered or, if no petition is filed with The Tax Court of the United States, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated. 53 Stat. 151, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; Aug. 14, 1953, c. 488, § 1(b), 67 Stat. 583.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1953 Amendments. Subsec. (i) added by Act Aug. 14, 1953.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1953 Amendment. Section 1(c) of Act Aug. 14, 1953, provided that the amendments to this section by said Act should be applicable

to jeopardy assessments made or in existence on Aug. 14, 1953 or which are thereafter made.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 14, 1953, see 1353 U.S.Code Cong. and Adm.News, p. 2398.

§ 1014. Claims in abatement

No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter. 53 Stat. 152.

§ 1015. Bankruptcy and receiverships

(a) **Immediate assessment.** Upon the adjudication of bankruptcy of any donor in any bankruptcy proceeding or the appointment of a receiver for any donor in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such donor shall, despite the restrictions imposed by section 1012(a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the adjudication of bankruptcy or the appointment of the receiver.

(b) **Unpaid claims.** Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the donor upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within six years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in sections 1012 (i), 1020(b), and 1023(b) (3) in the case of a deficiency in a tax imposed by this chapter. 53 Stat. 152, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1016. Period of limitation upon assessment and collection

(a) **General rule.** Except as provided in subsection (b), the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for

the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) **Exceptions**

(1) **False return or no return.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) **Collection after assessment.** Where the assessment of any tax imposed by this chapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor. 53 Stat. 153.

§ 1017. Suspension of running of statute

The running of the statute of limitations provided in section 1016 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 1012(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter. 53 Stat. 153, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 1018. Addition to the tax in case of delinquent return

For addition to the tax in case of failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of the law, see section 3612(d) (1). 53 Stat. 153.

§ 1019. Additions to the tax in case of deficiency

(a) **Negligence.** If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 1021, relating to interest on deficiencies, shall not be applicable.

(b) **Fraud.** If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d) (2). 53 Stat. 153.

§ 1020. Interest on extended payments

(a) **Tax shown on return.** If the time for payment of the amount determined as the tax by the donor is extended under the authority of section 1008(b), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such pay-

ment should have been made if no extension had been granted, until the expiration of the period of the extension.

(b) **Deficiency.** In case an extension for the payment of a deficiency is granted, as provided in section 1012(i), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. 53 Stat. 154.

§ 1021. Interest on deficiencies

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under section 1012(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. 53 Stat. 154.

§ 1022. Interest on jeopardy assessments

In the case of the amount collected under section 1013(f) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 1013(i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 1021. 53 Stat. 154.

§ 1023. Additions to the tax in case of nonpayment

(a) Tax shown on return

(1) **Payment not extended.** Where the amount determined by the donor as the tax imposed by this chapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

(2) **Payment extended.** Where an extension of time for payment of the amount so determined as the tax by the donor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 1020(a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency

(1) **Payment not extended.** Where a deficiency, or any interest assessed in connection therewith under section 1021, or any addition to the tax provided for in section 3612(d), is not paid in full within 10 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(2) **Filing of jeopardy bond.** If a bond is filed, as provided in section 1013, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) **Payment extended.** If the part of the deficiency the time for payment of which is extended as provided in section 1012(i) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per

centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) **Jeopardy assessment—Payment stayed by bond.** If the amount included in the notice and demand from the collector under section 1013(i) is not paid in full within 10 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(5) **Interest in case of bankruptcy and receiverships.** If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 1015, is not paid in full within 10 days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. 53 Stat. 154.

§ 1024. Penalties

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. 53 Stat. 155.

§ 1025. Transferred assets

(a) **Method of collection.** The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **Transferees.** The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this chapter.

(2) **Fiduciaries.** The liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of the payment of any such tax from the estate of the donor. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.** The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period provided in paragraph (1)—then within one year after return of execution in such proceeding.

(c) **Period for assessment against donor.** For the purposes of this section, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

(d) **Suspension of running of statute of limitations.** The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 1012 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(e) **Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.** No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of any such tax.

(f) **Definition of "transferee."** As used in this section the term "transferee" includes donee, heir, legatee, devisee, and distributee.

(g) **Address for notice of liability.** In the absence of notice to the Commissioner under section 1026(b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. 53 Stat. 155, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a). (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1026. Notice of fiduciary relationship

(a) **Fiduciary of donor.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the donor in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

(b) **Fiduciary of transferee.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 1025, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.** Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. 53 Stat. 156.

§ 1027. Refunds and credits

(a) **Authorization.** Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any gift tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) **Limitation on allowance**

(1) **Period of limitation.** No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **Limit on amount of credit or refund.** The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

[(c) **Effect of petition to Tax Court.**]¹ If the Commissioner has mailed to the taxpayer a notice of deficiency under section 1012(a) and if the taxpayer files a petition with The Tax Court of the United States within the time prescribed in such subsection, no credit or refund in respect of the tax for the calendar year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

[(d) **Overpayment found by Tax Court.**]¹ If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid within three years before the filing of the claim or the mailing of the notice of deficiency, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency. 53 Stat. 156, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 457, Title V, § 504(a), (c), 56 Stat. 954, 957.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

1942 Amendment. Subsec. (d), second sentence, amended by Act Oct. 21, 1942, which substituted "or the mailing of the notice of deficiency" for "or the filing of the petition".

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. For text of said subsections see section 1100 of I.R.C. 1939 and notes thereunder.

Effective Date of 1942 Amendment. Section 457 of Act Oct. 21, 1942, was made applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years, by section 451 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1028. Laws made applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this chapter. 53 Stat. 157.

§ 1029. Rules and regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 157.

§ 1030. Definitions

For the purposes of this chapter—

(a) **Calendar year.** The term "calendar year" includes only the calendar year 1932 and succeeding calendar years, and, in the case of the calendar year 1932, includes only the portion of such year after June 6, 1932.

(b) **Property within the United States.** Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property situated within the United States. 53 Stat. 157, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title IV, § 458(a), 56 Stat. 954.

Historical Note

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective as of Feb. 10, 1939, by section 458(b) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1031. Publicity of returns

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.

53 Stat. 157.

CHAPTER 5.—THE TAX COURT OF THE UNITED STATES

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SUBCHAPTER A.—ORGANIZATION, JURISDICTION AND PROCEDURE

PART I.—ORGANIZATION AND JURISDICTION

Historical Note

Change of Name. Chapter heading changed from Board of Tax Appeals to The Tax Court of the United States by Act Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 937. See section 1100 of I.R.C.1939 and notes thereunder.

§ 1100. Status

The Board of Tax Appeals (hereinafter referred to as the "Board") shall be continued as an independent agency in the Executive Branch of the Government. The Board shall be known as The Tax Court of the United States and the members thereof shall be known as the chief judge and the judges of The Tax Court of the United States. 53 Stat. 158, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

1942 Amendment. Act Oct. 21, 1942, added second sentence.

Change of Name. Act June 25, 1948, as amended by Act May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Section 504(c) of Act Oct. 21, 1942, provided as follows: "(c) All references in any statute (except this section), or in any rule, regulation, or order, to the 'Board of Tax Appeals' or to the 'Board' when used in the sense of 'Board of Tax Appeals', or to the 'member', 'members', or 'chairman' thereof shall be considered to be made to The Tax Court of the United States, the judge, judges, and presiding judge thereof, respectively."

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective the day after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 504(a) thereof.

Savings Clause. Section 504(b) of Act Oct. 21, 1942, provided as follows: "(b) The jurisdiction, powers, and duties of The Tax Court of the United States, its divisions and its officers and employees, and their appointment, including the designation of its officers, and the immunities, tenure of office, powers, duties, rights, and privileges of the presiding judge and judges of The Tax Court of the United States shall be the same as by existing law provided in the case of the Board of Tax Appeals. The Commissioner shall continue to be represented by the same counsel in the same manner before the Court as he has heretofore been

represented in proceedings before the Board of Tax Appeals and the taxpayer shall continue to be represented in accordance with rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before such Court because of his failure to be a member of any profession or calling."

Processing Tax Refunds. Acts Oct. 21, 1942, c. 619, Title V, § 510(a), (c), (d), 56 Stat. 987, eff. Jan. 1, 1943, provided as follows:

"(a) Effective as of the close of business on December 31, 1942, the Board of Review, established under section 906(b) of the Revenue Act of 1936, is hereby abolished and the jurisdiction vested in said Board of Review is hereby transferred to and vested in the Board of Tax Appeals."

"(c) All proceedings pending in the said Board of Review on December 31, 1942, shall be deemed pending in and be transferred forthwith to the Board of Tax Appeals, and shall be proceeded with and disposed of by the Board of Tax Appeals as if originally begun therein."

"(d) All journals, dockets, books, files, records, and property, including office equipment of the said Board of Review, shall be transferred to the Board of Tax Appeals."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1101. Jurisdiction

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by chapters 1, 2, 3, and 4 of this title, by Title II and Title III of the Revenue Act of 1926, 44 Stat. 9, or by laws enacted subsequent to February 26, 1926. 53 Stat. 158, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1102. Judges

(a) Number. The Tax Court shall be composed of 16 judges.

(b) Appointment. Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) **Salary.** Each judge shall receive salary at the rate of \$15,000 per annum.

(d) **Expenses for travel and subsistence.** The judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

(e) **Term of office.** The terms of office of the sixteen judges first taking office after June 1, 1926, shall expire, as designated by the President at the time of nomination, four at the end of the sixth year, four at the end of the eighth year, four at the end of the tenth year, and four at the end of the twelfth year, after June 2, 1926. The terms of office of all successors shall expire twelve years after the expiration of the terms for which their predecessors were appointed; but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(f) **Removal from office.** Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) **Disbarment of removed judges.** A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court. 53 Stat. 159, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; July 31, 1946, c. 704, § 1, 60 Stat. 716.

Historical Note

1946 Amendment. Subsec. (c) amended by Act July 31, 1946, which increased the salaries of the judges from \$10,000 to \$15,000 per year.

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Apr. 2, 1948, see 1948 U.S. Code Cong.Service, p. 1163. See, also, Act July 31, 1946, 1946 U.S. Code Cong.Service, p. 1375.

§ 1103. Organization

(a) **Seal.** The Tax Court shall have a seal which shall be judicially noticed.

(b) **Designation of presiding judge.** The Tax Court shall at least biennially designate a judge to act as presiding judge.

(c) **Divisions.** The presiding judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the presiding judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) **Quorum.** A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively. 53 Stat. 159, amended Oct. 21,

1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1104. Offices

The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States. The Secretary of the Treasury shall provide the Tax Court with suitable rooms in courthouses or other buildings when necessary for hearings by the Tax Court, or any division thereof, outside the District of Columbia. 53 Stat. 159, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1105. Times and places of meetings

The times and places of the meetings of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable. 53 Stat. 159, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act June 25, 1948, as amended by Act May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Act Oct. 21, 1942 changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section

1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1106. Retirement

(a) **Definitions.** For the purposes of this section—

(1) The term "Tax Court" means the Tax Court of the United States.

(2) The term "Civil Service Commission" means the United States Civil Service Commission.

(3) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(4) The term "Civil Service Retirement Act" means the Civil Service Retirement Act of May 29, 1930, as amended.

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge or as a member of the Board.

(b) **Retirement.**

(1) Any judge who has served as judge for eighteen years or more may retire at any time.

(2) Any judge who has served as judge for ten years or more and has attained the age of seventy shall retire not later than the close of the third month beginning after whichever of the following months is the latest:

- (A) The month in which he attained age seventy;
- (B) The month in which he completed ten years of service as judge; or
- (C) The month in which this section is enacted.

Section 2(a) of the Civil Service Retirement Act (relating to automatic separation from the service) shall not apply in respect to judges.

(c) **Recalling of retired judges.** Any individual who is receiving retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed ninety calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for the purposes of section 1102(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same allowances for travel and other expenses as a judge.

(d) **Retired pay.** Any individual who after the date of the enactment of this section—

(1) ceases to be a judge by reason of paragraph (2) of subsection (b), or ceases to be a judge after having served as judge for eighteen years or more; and

(2) elects under subsection (e) to receive retired pay under this subsection,

shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge as the number of years he has served as judge bears to twenty-four; except that the rate of such retired pay shall be not less than one-half of the rate of such salary and not more than the rate of such salary. Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of one year shall be eliminated if it is less than six months, or shall be counted as a full year if it is six months or more.

(e) **Election to receive retired pay.** Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) once made, shall be irrevocable;

(3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Civil Service Commission.

The chief judge shall transmit to the Civil Service Commission a copy of each notice filed with him under this subsection.

(f) Individuals receiving retired pay to be available for recall. Any individual who has elected to receive retired pay under subsection (d) who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the one-year period which begins on the first day on which he so fails to perform such duties.

(g) Coordination with civil service retirement.

(1) General rule. Except as otherwise provided in this subsection, the provisions of the Civil Service Retirement Act (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such Act applies) as if this section had not been enacted.

(2) Effect of electing retired pay. In the case of any individual who has filed an election to receive retired pay under subsection (d) and who has not filed a waiver under paragraph (3) of this subsection—

(A) he shall not be entitled to any annuity under section 1, 2, 3A, 6, or 7 of the Civil Service Retirement Act for any period beginning on or after the day on which he files such election;

(B) no amount shall be returned to him under section 7(a) of such Act;

(C) subsections (b) and (c) of section 4 of such Act, and subsection (c) of section 12 of such Act, shall apply in respect of such individual as if he were retiring or had retired under section 1 of such Act on the date on which his retired pay under subsection (d) of this section began to accrue; except that (i) the amount of any annuity payable to a survivor of such individual under subsection (b) or (c) of such section 4 or under subsection (c) of such section 12 shall be based on a life annuity for such individual computed as provided in subsection (a) of such section 4, and (ii) if such individual makes the election provided by subsection (b) or (c) of such section 4, his retired pay under subsection (d) of this section shall be reduced by the amount by which a life annuity computed as provided in subsection (a) of such section 4 would be reduced;

(D) in computing the "aggregate amount of the annuity paid" for purposes of section 12(g) of such Act, any retired pay which has accrued under subsection (d) of this section (including any such retired pay forfeited under subsection (f)) shall be included as if it were an annuity payable to him under such Act; and

(E) no deduction for the purposes of the civil-service retirement and disability fund shall be made from the retired pay payable to him under subsection (d) of this section, or from any other salary, pay, or compensation payable to him, for any period after the date on which such retired pay began to accrue.

(3) Waiver of civil service benefits.

(A) Any individual who has elected to receive retired pay under subsection (d) of this section may (at any time thereafter during the period prescribed by subsection (e) (1)) waive all benefits under the Civil Service Retirement Act. Such a waiver (i) once made, shall be irrevocable, and (ii) shall be made in the same manner as is provided for an election by such individual under subsection (e). The chief judge shall transmit to the Civil Service Commission a copy of each notice of waiver filed with him under this paragraph.

(B) In the case of any individual who has made a waiver under this paragraph—

(i) no annuity shall be payable to any person under the Civil Service Retirement Act with respect to any service performed by such individual (whether performed before or after such waiver is filed, and whether performed as judge or otherwise);

(ii) no deduction shall be made from any salary, pay, or compensation of such individual for the purposes of the civil-service retirement and disability fund for any period beginning after the day on which such waiver is filed;

(iii) except as provided in clause (iv), no refund shall be made under the Civil Service Retirement Act of any amount credited to the account of such individual or of any interest on any amount so credited;

(iv) additional sums voluntarily deposited by such individual under the second paragraph of section 10 of the Civil Service Retirement Act shall be promptly refunded, together with interest on such additional sums at 3 per centum per annum (compounded on December 31 of each year) to the day of such filing; and

(v) subsections (e) and (g) of section 12 of the Civil Service Retirement Act shall not apply.

(4) Employees' compensation. The fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act shall apply in respect of retired pay accruing under subsection (d) of this section as if such retired pay were an annuity payable under such Act. Added Aug. 7, 1953, c. 352, 67 Stat. 482.

Historical Note

References in Text. Civil Service Retirement Act, referred to in subsec. (a) (4) and subsec. (g) (1) (3) (A) (B) (i) (iii), is classified to chapter 14 of Title 5, Executive Departments and Government Officers and Employees.

Words "such Act", referred to in subsec. (g) (1) (2) (D) (4), refer to the Civil Service Retirement Act of May 29, 1930.

Sections 1, 2, 3A, 6 and 7 of the Civil Service Retirement Act, referred to in subsec. (g) (2) (A), are classified to sections 691, 693-1, 710-714, and 733 of Title 5; and section "7(a) of such Act", referred to in the text of subsec. (g) (2) (B) of the Act referred to above, is classified to section 733(a) of such title.

Section "1 of such Act", referred to in the text of subsec. (g) (3) (C), is classified to section 691 of Title 5.

Section 2(a) of the Civil Service Retirement Act, referred to in subsec. (a), is classified to section 715(a) of Title 5.

Section "4 of such Act", "such section 4", and "subsection (a) of such section 4", referred to in subsec. (g) (2) (C), are classified to sections 698 and 698(a) of Title 5.

Section 6 of the Civil Service Retirement Act, referred to in subsec. (g) (4), is classified to sections 710-714 of Title 5.

Section 10 of the Civil Service Retirement Act, referred to in subsec. (g) (3) (B) (iv), is classified to sections 719, 719-1, 721 and 722 of Title 5.

Section "12 of such Act", "such section 12", and "section 12(g) of such Act", referred to in subsec. (g) (2) (C) (D), are classified to sections 724 and 724(g) of Title 5.

Subsections "(e) and (g) of section 12 of the Civil Service Retirement Act", referred to in subsec. (g) (3) (B) (v), are classified to sections 724(e) and 724(g) of Title 5.

"The month in which this section is enacted", referred to in subsec. (b) (2) (C), was August, 1953.

The "date of the enactment of this section", referred to in subsec. (d), opening clause, was August 7, 1953.

Legislative History: For legislative history and purpose of Act Aug. 7, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2305.

PART II.—PROCEDURE

§ 1110. Fee for filing petition

The Tax Court is authorized to impose a fee in an amount not in excess of \$10 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1111. Rules of practice, procedure, and evidence

The proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in the courts of the District of Columbia in the type of proceedings which prior to September 16, 1938, were within the jurisdiction of the courts of equity of said District. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1112. Burden of proof in fraud cases

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner. 53 Stat. 160.

§ 1113. Service of process

The mailing by registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 1114. Administration of oaths and procurement of testimony

(a) **In general.** For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge of the Tax Court, or any employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or (2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) **Commissioners.** The chief judge may from time to time by written order designate an attorney from the legal staff of the court to act as a commissioner in a particular case. The commissioner so designated shall proceed under such rules and regulations as may be promulgated by the court. The commissioner shall receive the same travel and subsistence allowances now or hereafter provided by law for commissioners of the Court of Claims. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 503, 58 Stat. 72; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

1944 Amendment. Act Feb. 25, 1944, amended section by inserting "(a) In general." preceding "For", and by adding new subsec. (b).

Change of Name. Act June 25, 1948, as amended May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax

Court of the United States. See section 1100 of I.R.C.1939, and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 1115. Witness fees

(a) **Amount.** Any witness summoned or whose deposition is taken under section 1114 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) **Payment.** Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) **Witnesses for Commissioner.** In the case of witnesses for the Commissioner, such payments shall be made by the Secretary out of any monies appropriated for the collection of internal-revenue taxes, and may be made in advance.

(2) **Other witnesses.** In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1116. Hearings

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies. 53 Stat. 160, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act June 25, 1948, as amended by Act May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax

Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1117. Reports and decisions

(a) **Requirement.** A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) **Inclusion of findings of fact or opinions in report.** It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions and memorandum opinions.

(c) **Date of decision.** A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Commissioner, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) **Effect of decision dismissing petition.** If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Commissioner. An order specifying such amount shall be entered in the records of the

Tax Court unless the Tax Court can not determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) **Effect of decision that tax is barred by limitation.** If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) **Findings of fact as evidence.** The findings of the Tax Court made in connection with any decision prior to February 26, 1926 shall, notwithstanding the enactment of the Revenue Act of 1926, 44 Stat. 9, continue to be prima facie evidence of the facts therein stated.

(g) **Proceeding frivolous.** Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of \$500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax.

(h) Cross references

(1) For special provisions relating to reports of divisions, see section 1118.

(2) For publication of reports, see section 1121.

53 Stat. 161, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1118. Provisions of special application to divisions

(a) **Hearings, determinations, and reports.** A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) **Effect of action by a division.** The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court. 53 Stat. 161, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a) (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act June 25, 1948, as amended by Act May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax

Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1119. Provisions of special application to transferees

(a) **Burden of proof.** In proceedings before the Tax Court the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(b) **Evidence.** Upon application to the Tax Court, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Tax Court, to a preliminary examination of books, papers, documents, correspondence and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Tax Court for the redetermination of his liability in respect of the tax (including interest, penalties, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application the Tax Court may require by subpoena, ordered by the Tax Court or any division thereof and signed by a judge, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Tax Court or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena. 53 Stat. 162, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1120. Publicity of proceedings

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as is provided by law. 53 Stat. 162, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; Oct. 25, 1951, c. 562, § 4(6), 65 Stat. 640.

Historical Note

1951 Amendment. Act Oct. 25, 1951 amended section by substituting, at end thereof, "is provided by law" in lieu of "it deems advisable".

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 25, 1951, see 1951 U.S.Code Cong.Service, p. 2434.

§ 1121. Publication of reports

The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication

shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents. 53 Stat. 162, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

PART III.—MISCELLANEOUS PROVISIONS

§ 1130. Employees

(a) **Appointment and compensation.** The Tax Court is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

(b) **Expenses for travel and subsistence.** The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949. 53 Stat. 162, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 9, 1949, c. 185, § 9, 63 Stat. 9; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

References in Text. The civil service laws and the Classification Act of 1949, referred to in subsec (a), are classified to chapters 12 and 21, respectively, of Title 5, Executive Departments and Government Officers and Employees.

The Travel Expense Act, referred to in subsec. (b), is classified to sections 835-842 of Title 5, Executive Departments and Government Officers and Employees.

1949 Amendment. Subsec. (a) amended by Act Oct. 28, 1949, which substituted the "Classification Act of 1949" in lieu of the "Classification Act of 1923, 42 Stat. 1483 (U.S.C., Title 5, § 13) as amended".

Subsec. (b), amended by Act June 9, 1949, which substituted the "Travel Expense Act of 1949" in lieu of the "Subsistence Expense Act of 1926, 44 Stat. 688 (U.S.C., Title 5, c. 16)."

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1131. Expenditures

The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. All expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for the purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the chief judge. 53 Stat. 163, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act June 25, 1943, as amended by Act May 24, 1949, substituted "chief judge" in lieu of "presiding judge".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax

Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1132. Disposition of fees

All fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts. Section 3709 of the Revised Statutes (U.S.C., Title 41, § 5) shall not be construed to apply to any purchase or service rendered for the Tax Court when the aggregate amount involved does not exceed the sum of \$25. 53 Stat. 163, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1133. Fee for transcript of record

The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. 53 Stat. 163, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBCHAPTER B.—COURT REVIEW OF TAX COURT DECISIONS

Historical Note

Change of Name. Subchapter heading changed from Court Review of Board Decisions to Court Review of Tax Court Decisions by Act Oct. 21, 1942, 4:30 p. m.,

E.W.T., c. 619, Title V, § 504(a), (c), 56 Stat. 957. See section 1100 of I.R.C.1939 and notes thereunder.

[§ 1140. Date when Tax Court decision becomes final] ¹

The decision of the Tax Court shall become final—

(a) Petition for review not filed on time. Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(b) Decision affirmed or petition for review dismissed

(1) Petition for certiorari not filed on time. Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the court of appeals and no petition for certiorari has been duly filed; or

(2) **Petition for certiorari denied.** Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the court of appeals; or

(3) **After mandate of Supreme Court.** Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the petition for review dismissed.

(c) **Decision modified or reversed**

(1) **Upon mandate of Supreme Court.** If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(2) **Upon mandate of the court of appeals.** If the decision of the Tax Court is modified or reversed by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the court of appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(d) **Rehearing.** If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Tax Court for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court had been rendered.

(e) **Definitions.** As used in this section—

(1) **Omitted.**

(2) **Mandate.** The term "mandate," in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate. 53 Stat. 163, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, §§ 1, 32(a), 62 Stat. 870, 991; May 24, 1949, c. 139, § 127, 62 Stat. 107.

¹ Catchline supplied by editor in conformance with change of name of Board of Tax Appeals.

Historical Note

Codification. Definition of term "Circuit Court of Appeals" as including the United States Court of Appeals for the District of Columbia has been deleted as superfluous in view of sections 41 and 43(a) of Title 28, Judiciary and Judicial Procedure, which include the District of Columbia within the eleven judicial circuits of the United States and provide for a court of appeals in each circuit.

Change of Name. Act June 25, 1948, § 32(a), as amended by Act May 24, 1949,

substituted "Court of Appeals" in lieu of "circuit court of appeals."

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1141. Courts of review

(a) The courts of appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.

(b) Venue

(1) **In general.** Except as provided in paragraph 2, such decisions may be reviewed by the court of appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

(2) **By agreement.** Notwithstanding the provisions of paragraph 1, such decisions may be reviewed by any court of appeals, or the United States Court of Appeals for the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing.

(3) **Application of subsection.** This subsection shall be applicable to all decisions of the Tax Court rendered on and after May 10, 1934, and section 1002 of the Revenue Act of 1926, 44 Stat. 110, as in force prior to May 10, 1934, shall be applicable to such decisions rendered prior thereto, except that paragraph 2 of this subsection may be applied to any such decision rendered prior to May 10, 1934.

(c) Powers

(1) **To affirm, modify, or reverse.** Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) **To make rules.** Such courts are authorized to adopt rules for the filing of the petition for review, the preparation of the record for review, and the conduct of proceedings upon such review.

(3) **To require additional security.** Nothing in section 1145 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) **To impose damages.** The court of appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the petition was filed merely for delay. 53 Stat. 164, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 1, 32(a), 36, 62 Stat. 870, 991; May 24, 1949, c. 139, §§ 127, 128, 63 Stat. 107.

Historical Note

Codification. The words "or the United States Court of Appeals for the District of Columbia" in subsection (b) (2) following "court of appeals" and "the United States Court of Appeals for the District of Columbia" in subsection (c) (4) following "court of appeals" have been deleted as superfluous in view of sections 41 and 43(a) of Title 28, Judiciary and Judicial Procedure, which include the District of Columbia within the eleven judicial circuits of the United States and provide for a court of appeals in each circuit.

1949 Amendment. Subsec. (a) amended by Act May 24, 1949, § 128, which substituted "court of appeals" in lieu of "circuit courts of appeals and the United States Court of Appeals for the District of Columbia".

1948 Amendment. Subsec. (a) amended by June 25, 1948, § 36, to change references from former Title 28 to sections in Title 28 and to add the clause "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury".

Change of Name. Act June 25, 1948, § 32(a), as amended by Act May 24, 1949, § 127, substituted in subsecs. (b) and (c) "court of appeals" in lieu of "circuit court of appeals".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Effective Date of 1948 Amendment. Section 38 of Act June 25, 1948, provided

that the amendment of this section should be effective as of Sept. 1, 1948.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 24, 1949, see 1949 U.S. Code Cong. Service, p. 1248. See, also, Act June 25, 1948, 1948 U.S. Code Cong. Service, p. 773.

§ 1142. Petition for review

The decision of the Tax Court rendered after February 26, 1926 (except as provided in subdivision (j) of section 283 and in subdivision (h) of section 318 of the Revenue Act of 1926, 44 Stat. 65, 83, relating to hearings before the Tax Court prior to February 26, 1926) may be reviewed by a court of appeals, or the United States Court of Appeals for the District of Columbia, as provided in section 1141, if a petition for such review is filed by either the Commissioner or the taxpayer within three months after the decision is rendered, or, in the case of a decision rendered on or before June 6, 1932, within six months after the decision is rendered. 53 Stat. 165, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

Historical Note

Change of Name. Act June 25, 1948, as amended by Act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax

Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1143. Change of Commissioner

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending after May 10, 1934, before any appellate court reviewing the action of the Tax Court. 53 Stat. 165, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1144. Cross reference

For authority of the Tax Court to fix fees for transcripts of records, see section 1133.

53 Stat. 165, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1145. Bond to stay assessment and collection

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 1142 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer (1) on or before the time his petition for review is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or (2) has filed a jeopardy bond under the income or estate tax laws. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced. 53 Stat. 165, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1146. Refund, credit, or abatement of amounts disallowed

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated. 53 Stat. 165, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of I.R.C.1939 and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBTITLE B—MISCELLANEOUS TAXES

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24. White-Phosphorus Matches	2650
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CHAPTER 6.—CAPITAL STOCK

Historical Note

Repeal of Capital Stock Tax. Revenue Act of 1945 (Act Nov. 8, 1945, c. 453, Title II, § 201, 59 Stat. 574), repealed the capital stock tax, effective with respect to years ending after June 30, 1945.

Historical Note

§§ 1200–1207. Repealed. Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title II, § 201, 59 Stat. 574

Effective Date. Revenue Act of 1945 (Act Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title II, § 201, 59 Stat. 574) repealed the capital stock tax, effective with respect to years ending after June 30, 1945.

Sections Prior to Repeal:

“§ 1200. Tax.—(a) Domestic corporations.

“For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1.25 for each \$1,000 of the declared value of its capital stock.

“(b) Foreign corporations.

“For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1.25 for each \$1,000 of the declared value of capital employed in the transaction of its business in the United States.

“(c) Repealed. Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title III, § 301(b), 55 Stat. 703.

“53 Stat. 169; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 205, 54 Stat. 521; Sept. 20, 1941, 12:15 p. m., E. S. T.,

c. 412, Title III, § 301(a, b), 55 Stat. 703, 704; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title III, § 301(a), 56 Stat. 939."

"§ 1201. Exemptions.

"(a) The taxes imposed by section 1200 shall not apply—

"(1) Corporations exempt from income tax.

"To any corporation enumerated in section 101;

"(2) Insurance companies.

"To any insurance company subject to the tax imposed by section 201, 204, or 207.

"(b) Common trust funds.

"For exemption of common trust funds from the capital stock tax, see section 169(b) of chapter 1.

"53 Stat. 169."

"§ 1202. Declared value—(a) Declaration of value.

"The declared value shall be the value as declared by the corporation in its return for the year (which declaration of value cannot be amended). The value declared by the corporation in its return shall be as of the close of its last income-tax taxable year ending with or prior to the close of the capital stock tax taxable year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

"(b) Credit for China Trade Act corporations.

"For the purpose of the tax imposed by section 1200 there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, 42 Stat. 549 (U.S.C., 1940 ed., Title 15, ch. 4), as a credit against the declared value of its capital stock, an amount equal to the proportion of such declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term 'China' shall have the same meaning as when used in the China Trade Act, 1922. 53 Stat. 169; June 29, 1939, 10 p. m., E.S.T., c. 247, Title III, § 301, 53 Stat. 882; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 202(1), 55 Stat. 701; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title III, § 301(b), 56 Stat. 939."

"§ 1203. Returns—(a) Requirement.

"Every corporation liable for tax under section 1200 shall make a return under oath. Such return shall contain such information and be made in such manner as the Commissioner with the

approval of the Secretary may by regulations prescribe.

"(b) Time for filing—(1) General rule.

"Such return shall be made within one month after the close of the year with respect to which such tax is imposed.

"(2) Extension of time.

"The Commissioner may extend the time for making the returns, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days. With respect to the year ending June 30, 1941, the extension may be for not more than ninety days. With respect to the years ended June 30, 1941, and June 30, 1942, the extension may be for not more than ninety days.

"(c) Place for filing.

"The return shall be made to the collector for the district in which is located the principal place of business of the corporation, or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. 53 Stat. 171; Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title II, § 301(c), 55 Stat. 704; Sept. 29, 1942, c. 569, 56 Stat. 762; Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title III, § 301(c), 56 Stat. 940."

"§ 1204. Publicity of returns.

"Returns required to be filed for the purpose of the tax imposed by section 1200 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (b) and (f) of section 55 shall not apply. 53 Stat. 171."

"§ 1205. Payment of tax—(a) Time of payment.

"The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return.

"(b) Extension of time.

"The Commissioner may extend the time for paying the taxes imposed by section 1200, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days. 53 Stat. 171."

"§ 1206. Addition to the tax in case of delinquency.

"If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. 53 Stat. 171."

"§ 1207. Other laws applicable.

"All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as not inconsistent with this chapter, be applicable in respect of the taxes imposed by section 1200. 53 Stat. 171."

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts amending sections 1200-1207, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

CHAPTER 7.—TAX ON TRANSFERS TO AVOID INCOME TAX

Sec.

- 1250. Imposition of tax.
- 1251. Nontaxable transfers.
- 1252. Definition of "foreign trust."
- 1253. Payment and collection.
- 1254. Publicity of returns.

§ 1250. Imposition of tax

There shall be imposed upon the transfer of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, an excise tax equal to $27\frac{1}{2}$ per centum of the excess of (1) the value of the stock or securities so transferred over (2) its adjusted basis in the hands of the transferor as determined under section 113 of the Revenue Act of 1932, 47 Stat. 198. 53 Stat. 172, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 208, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title I, § 110(b), 55 Stat. 696.

Historical Note

1941 Amendment. Section was formerly composed of two subsections, designated "(a)" and "(b)". Act Sept. 20, 1941, struck out the heading of subsec. (a), substituted " $27\frac{1}{2}$ per centum" for " 25 per centum", and repealed subsec. (b), which related to defense tax for five years.

1940 Amendment. Subsec. (a) created from section as originally enacted and heading "(a) General Rule.—" was inserted by Act June 25, 1940.

Subsec. (b) added by Act June 25, 1940.

Effective Date. Act Sept. 20, 1941, was made applicable only with respect to taxable years beginning after Dec. 31, 1940, by section 118 thereof.

Treaty Obligations. Section 108 of Act Sept. 20, 1941, provided as follows: "No amendment made by this title [sections 101-118 of 1941 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1251. Nontaxable transfers

The tax imposed by section 1250 shall not apply—

(a) if the transferee is an organization exempt from income tax under section 103 of the Revenue Act of 1932; or

(b) if prior to the transfer it has been established to the satisfaction of the Commissioner that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. 53 Stat. 172.

§ 1252. Definition of "foreign trust"

A trust shall be considered a foreign trust within the meaning of this chapter if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property so transferred, the profit, if any, from such sale would not be included in the gross income of the trust under Title I of the Revenue Act of 1922. 53 Stat. 172.

§ 1253. Payment and collection

(a) The tax imposed by section 1250 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Under regulations prescribed by the Commissioner with the approval of the Secretary the tax may be abated, remitted, or refunded if after the transfer it has been established to the satisfaction of the Commissioner that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(c) All administrative, special, or stamp provisions of law, including penalties and including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 172.

§ 1254. Publicity of returns

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.
53 Stat. 172.

CHAPTER 8.—ALASKAN RAILROADS TAX

§§ 1300, 1301. Repealed. June 10, 1952, c. 390, 66 Stat. 133.

Historical Note

Effective Date. Section 1 of Act June 10, 1952, c. 390, 66 Stat. 133, provided in part that the repeal of these sections became effective with respect to taxable years ending after June 10, 1952.

Sections Prior to Repeal:

"§ 1300. Rate of tax

"There shall be levied and collected, for each taxable year beginning after December 31, 1933, a tax of one per centum on the gross annual income of all railroad corporations doing business in Alaska, on business done in Alaska. 53 Stat. 173."

"§ 1301. Assessment and collection of tax

"The tax imposed by section 1300 shall be computed and collected in the manner

provided in section II of the act of October 3, 1913, c. 16, 38 Stat. 114, 174. The proceeds of such tax when collected shall be deposited into the Treasury as miscellaneous receipts, and amounts equal thereto are (1) authorized to be appropriated annually from the general fund of the Treasury, (2) paid to the treasurer of Alaska, and (3) made applicable to general Territorial purposes. If the total of receipts for any fiscal year is greater than the amount appropriated for the payment of such receipts to the Alaskan government, such excess is authorized to be appropriated for the following fiscal year. 53 Stat. 173."

CHAPTER 9.—EMPLOYMENT TAXES

SUBCHAPTER A.—EMPLOYMENT BY OTHERS THAN CARRIERS

PART I.—TAX ON EMPLOYEES

- Sec.
1400. Rate of tax.
1401. Deduction of tax from wages.
1402. Non-deductibility of tax from net income.
1403. Receipts for employees.

PART II.—TAX ON EMPLOYERS

1410. Rate of tax.
1411. Adjustment of tax.
1412. Instrumentalities of the United States.

PART III.—GENERAL PROVISIONS

1420. Collection and payment of taxes.
1421. Overpayments and underpayments.
1422. Erroneous payments.
1423. Sale of stamps by postmasters.
1424. Expenditures incurred by the Post Office Department.
1425. Penalties relating to stamps and other collection devices.
1426. Definitions.
1427. Deductions as constructive payments.
1428. Estimate of revenue reduction.
1429. Rules and regulations.
1430. Other laws applicable.
1431. Effective date of subchapter.
1432. Short title.

SUBCHAPTER B.—EMPLOYMENT BY CARRIERS

PART I.—TAX ON EMPLOYEES

1500. Rate of tax.
1501. Deduction of tax from compensation.
1502. Overpayments and underpayments.
1503. Non-deductibility of tax from net income.

PART II.—TAX ON EMPLOYEE REPRESENTATIVES

1510. Rate of tax.
1511. Determination of compensation.
1512. Non-deductibility of tax from net income.

PART III.—TAX ON EMPLOYERS

1520. Rate of tax.
1521. Adjustments.
1522. Overpayments and underpayments.

PART IV.—GENERAL PROVISIONS

1530. Collection and payment of taxes.
1531. Erroneous payments.
1532. Definitions.
1534. Court jurisdiction.
1535. Rules and regulations.
1536. Other laws applicable.
1537. Effective date of subchapter.
1538. Title of subchapter.

EMPLOYMENT TAXES

SUBCHAPTER C.—TAX ON EMPLOYERS OF EIGHT OR MORE

Sec.

- 1600. Rate of tax.
- 1601. Credits against tax.
- 1602. Conditions of additional credit allowance.
- 1603. Approval of State laws.
- 1604. Returns.
- 1605. Payment of taxes.
- 1606. Interstate commerce and Federal instrumentalities.
- 1607. Definitions.
- 1608. Deductions as constructive payments.
- 1609. Rules and regulations.
- 1610. Other laws applicable.
- 1611. Short title.

SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

- 1621. Definitions.
- 1622. Income tax collected at source.
- 1623. Liability for tax.
- 1624. Return and payment by governmental employer.
- 1625. Receipts.
- 1626. Penalties.
- 1627. Other laws applicable.

SUBCHAPTER E.—GENERAL PROVISIONS

- 1630. Repealed.
- 1631. Failure of employer to file return.
- 1632. Acts to be performed by agents.
- 1633. Receipts for employees.
- 1634. Penalties.
- 1635. Period of limitation upon assessment and collection of certain employment taxes.
- 1636. Period of limitation upon refunds and credits of certain employment taxes.

SUBCHAPTER A.—EMPLOYMENT BY OTHERS THAN CARRIERS

PART I.—TAX ON EMPLOYEES

Historical Note

Effective Date of Act Aug. 28, 1950 with Respect to 1950 Reorg. Plan No. 26. Section 407 of Act Aug. 28, 1950, c. 809, Title IV, 64 Stat. 561, provided that: "For the purposes of section 1(a) of Reorganization Plan No. 26 of 1950 [set out as a note preceding section 1 of I.R.C.1939], this Act [Act Aug. 28, 1950, c. 809, 64 Stat. 477] shall be deemed to have been enacted prior to the effective date of such plan [July 31, 1950]."

Social Insurance and Labor Relations of Railroad Coal-mining Employees; Retroactive Operation of Act Aug. 13, 1940, c. 664, 54 Stat. 785, Effect on Payments, Rights, etc.

Sections 4-7 of Act Aug. 13, 1940, with regard to the operation and effect of these changes, provided:

"Sec. 4. (a) The laws hereby expressly amended [section 1532 of I.R.C.1939, and sections 151, 215, 228a, 261, and 361 of Title 45], the Social Security Act, approved August 14, 1935 [section 301 et seq. of Title 42], and all amendments thereto, shall operate as if each amendment herein contained had been enacted as a part of the law it amends, at the time of the original enactment of such law.

"(b) No person (as defined in the Carriers Taxing Act of 1937 [section 261 et seq. of Title 45]) shall be entitled, by reason of the provisions of this Act, to a refund of, or relief from liability for, any income or excise taxes paid or accrued, pursuant to the provisions of the Carriers Taxing Act of 1937 [section 261 et seq., of Title 45] or sub-

OTHERS THAN CARRIERS

chapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of I.R.C.1939], prior to the date of the enactment of this Act by reason of employment in the service of any carrier by railroad subject to part I of the Interstate Commerce Act [section 1 et seq. of Title 49], but any individual who has been employed in such service of any carrier by railroad subject to part I of the Interstate Commerce Act [section 1 et seq. of Title 49] as is excluded by the amendments made by this Act from coverage under the Carriers Taxing Act of 1937 [section 261 et seq. of Title 45] and subchapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of I.R.C.1939], and who has paid income taxes under the provisions of such Act or subchapter, and any carrier by railroad subject to part I of the Interstate Commerce Act [section 1 et seq. of Title 49] which has paid excise taxes under the provisions of the Carriers Taxing Act of 1937 [section 261 et seq. of Title 45] or subchapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of I.R.C.1939], may, upon making proper application therefor to the Bureau of Internal Revenue, have the amount of taxes so paid applied in reduction of such tax liability with respect to employment, as may, by reason of the amendments made by this Act, accrue against them under the provisions of title VIII of the Social Security Act [former section 1001 et seq. of Title 42] or the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code [section 1400 et seq. of I.R.C.1939]).

"(c) Nothing contained in this Act shall operate (1) to affect any annuity, pension, or death benefit granted under the Railroad Retirement Act of 1935 [sections 215-228 of Title 45] or the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45], prior to the date of enactment of this Act, or (2) to include any of the services on the basis of which any such annuity or pension was granted, as employment within the meaning of section 210(b) of the Social Security Act or section 209(b) of such Act, as amended [former sections 410(b) and 409(b), respectively, of Title 42]. In any case in which a death benefit alone has been granted, the amount of such death benefit attributable to services, coverage of which is affected by this Act, shall be deemed to have been paid to the deceased under section 204 of the Social Security Act [former section 404 of Title 42] in effect prior to January 1, 1940, and deductions shall be made from any insurance benefit or benefits payable under the Social Security Act, as amended [section 301 et seq. of Title 42], with respect to wages paid to an individual for such services until such deductions total the amount of such death benefit attributable to such services.

"(d) Nothing contained in this Act shall operate to affect the benefit rights

of any individual under the Railroad Unemployment Insurance Act [section 351 et seq. of Title 45] for any day of unemployment (as defined in section 1(k) of such Act [section 351(k) of Title 45]) occurring prior to the date of enactment of this Act.

"Sec. 5. Any application for payment filed with the Railroad Retirement Board prior to, or within sixty days after, the enactment of this Act shall, under such regulations as the Social Security Board may prescribe, be deemed to be an application filed with the Social Security Board by such individual or by any person claiming any payment with respect to the wages of such individual, under any provision of section 202 of the Social Security Act, as amended [former section 402 of Title 42].

"Sec. 6. Nothing contained in this Act, nor the action of Congress in adopting it, shall be taken or considered as affecting the question of what carriers, companies, or individuals, other than those in this Act specifically provided for, are included in or excluded from the provisions of the various laws to which this Act is an amendment.

"Sec. 7. (a) Notwithstanding the provisions of section 1605(b) of the Internal Revenue Code, [1939] no interest shall, during the period February 1, 1940, to the eighty-ninth day after the date of enactment of this Act, inclusive, accrue by reason of delinquency in the payment of the tax imposed by section 1600 with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of Title 45] prior to the date of enactment of this Act.

"(b) Notwithstanding the provisions of section 1601(a) (3) of the Internal Revenue Code, [1939] the credit allowable under section 1601(a) against the tax imposed by section 1600 for the calendar year 1939 shall not be disallowed or reduced by reason of the payment into a State unemployment fund after January 31, 1940, of contributions with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of Title 45] prior to the date of enactment of this Act: *Provided*, That this subsection shall be applicable only if the contributions with respect to such services are paid into the State unemployment fund before the ninetieth day after the date of enactment of this Act."

Act Aug. 13, 1940, c. 664, 54 Stat. 735, specifically amended section 1532 of I.R.C. 1939 and sections 151, 213, 228a, 261, and 351 of Title 45, by redefining the terms "employer", "employee", and "carrier". In its report on the bill, the Senate committee approved the policy that coal-mining activities of railroads and their subsidiaries for the purpose of railroad op-

erations, "whether conducted directly by carriers or by subsidiaries of carriers, should for purposes of a social-insurance program and for purposes of labor relations be covered by the system of laws applicable to coal-mining generally rather

than the system of laws applicable to the railroad industry." The committee accordingly recommended the enactment of the bill "so as to exclude coal-mining operations from the acts covering the railroad industry."

§ 1400. Rate of tax

In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 1426(a)) received by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages received during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.

(2) With respect to wages received during the calendar years 1950 to 1953, both inclusive, the rate shall be 1½ per centum.

(3) With respect to wages received during the calendar years 1954 to 1959, both inclusive, the rate shall be 2 per centum.

(4) With respect to wages received during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ per centum.

(5) With respect to wages received during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 per centum.

(6) With respect to wages received after December 31, 1969, the rate shall be 3¾ per centum. 53 Stat. 175, amended Aug. 10, 1939, c. 666, Title VI, § 601, 53 Stat. 1381; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VII, § 701(a), 56 Stat. 981; Dec. 22, 1943, c. 375, § 3(a), 57 Stat. 607; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title IX, § 901(a), 58 Stat. 93; Dec. 16, 1944, c. 600, § 1(a), 58 Stat. 812; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title IV, § 401(a), 59 Stat. 576; Aug. 10, 1946, c. 351, Title I, § 101, 60 Stat. 978; Aug. 6, 1947, c. 510, § 1, 61 Stat. 793; Aug. 28, 1950, c. 809, Title II, § 201(a), 64 Stat. 524.

Historical Note

References to Social Security Act. References in I.R.C.1939 to provisions of the Social Security Act, chapter 7 of Title 42, The Public Health and Welfare, redesignated by Act Sept. 1, 1954, c. 1206, 68 Stat. 1052 as deemed to refer to such provisions as so redesignated, see note set out under section 3101 of the Internal Revenue Code of 1954.

1950 Amendment. Act Aug. 28, 1950, amended section by increasing the rate of the employer's and employees' taxes as of Jan. 1, 1951.

1947 Amendment. Clauses (1), (2), and (3) amended by Act Aug. 6, 1947, which continued the 1 per cent rate through 1949 in clause (1), reduced rate to 1½ per cent through 1951 in clause (2), and reduced rate to 2 per cent after Dec. 31, 1951 in clause (3).

1946 Amendment. Clauses (1) and (2) amended by Act Aug. 10, 1946, which continued the 1 per cent. rate through 1947 and deferred application of the 2½ per cent. rate until 1948.

1945 Amendment. Clauses (1) and (2) amended by Act Nov. 8, 1945, which continued the 1 per cent rate through the calendar year 1946 and made the 2½ per

cent rate applicable to wages received during the calendar years 1947 and 1948.

1944 Amendments. Act Dec. 16, 1944, amended section by freezing the rate at 1 per centum for the year 1945, and renumbered clauses (1)-(4) to be clauses (1)-(3).

Clauses (1) and (2) amended by Act Feb. 25, 1944, which provided for the freezing of the rate at 1 per centum for 1944.

1943 Amendment. Clauses (1) and (2) amended by Joint Res. Dec. 22, 1943, which provided for the freezing of the rate of 1 per centum for the first two months of 1944.

1942 Amendment. Clauses (1) and (2) amended by Act Oct. 21, 1942, which provided for the freezing of the rate of 1 per centum for 1943.

1939 Amendment. Act Aug. 10, 1939, renumbered clauses (1)-(5) to be clauses (1)-(4), substituted "wages received" for "employment" in all clauses, and reduced rate for years 1940, 1941, and 1942, from 1½ to 1 per cent.

Short Title. Congress in enacting amendments to this section and section

1410 of I.R.C.1939 to sections 1104(h) and 1321(a) of Title 42, and notes to sections 303, 1104, and 1321 of Title 42, and to sections 1636 and 1667 of the Appendix to Title 50, provided by section 6 of Act Aug. 6, 1947, that such amendments and notes may be cited as the "Social Security Act Amendments of 1947".

Deductions. Section 112(b) of Act Sept. 1, 1954, c. 1206, Title I, 68 Stat. 1035, provided that: "No deductions shall be made pursuant to section 907 of the Social Security Act Amendments of 1939 (53 Stat. 1360, 1402) [set out as a note under this section], with respect to wages for services performed in 1939, from any benefits for any month after August 1954; and, effective September 1, 1954, such section is amended by striking out '1 per centum of any wages paid him for services performed in 1939, and subsequent to his attaining age sixty-five, and'."

The phrase "and 1 per centum of any wages paid him for services which constitute employment by virtue of subsection (o) of section 409 of Title 42, as amended" inserted as an amendment by Act Mar. 24, 1943, c. 26, § 1(b) (3), 57 Stat. 47 to Act Aug. 10, 1939, c. 686, Title IX, § 907, 53 Stat. 1402 has expired since section 202 of Act July 8, 1946, c. 543, Title II, 60 Stat. 501, terminated the War Shipping Administration as of Sept. 1, 1946, and transferred all functions, powers, duties, etc. to the United States Maritime Commission for the period from Sept. 1, 1946, to Dec. 31, 1946, for the purpose of liquidating the Administration and former § 409 was stricken by Act Aug. 28, 1950, c. 809, Title I, § 104(a), 64 Stat. 492, and a new section inserted.

Act Aug. 10, 1939, c. 686, Title IX, § 907, 53 Stat. 1402, as amended by Act Mar. 24, 1943, c. 26, § 1(b) (3), 57 Stat. 47 provided: "In addition to any other deductions made under section 203 of the Social Security Act [former section 403 of

Title 42], as amended, deductions shall be made from any primary insurance benefit or benefits to which an individual is entitled or from any other insurance benefit payable with respect to such individual's wages, until such deductions total 1 per centum of any wages paid him for services performed in 1939, and subsequent to his attaining age sixty-five and 1 per centum of any wages paid him for services which constitute employment by virtue of [former] subsection (o) of section 409 of Title 42, as amended, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code [section 1400 of I.R.C.1939] have not been deducted by his employer from his wages or paid by such employer."

Taxes on Services Rendered by Employees of International Organizations Prior to Jan. 1, 1946. Section 5(b) of Act Dec. 29, 1945, c. 652, Title I, 59 Stat. 671, provided that taxes should not be collected on services rendered by employees of International Organizations prior to Jan. 1, 1946, under former sections 1001-1011 or 1101-1110 of Title 42, The Public Health and Welfare, or under sections 1400 et seq. and 1600 et seq. of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Acts Aug. 6, 1947, 1947 U.S.Code Cong. Service, p. 1641; Aug. 10, 1946, 1946 U.S. Code Cong.Service, p. 1510; Nov. 8, 1945, 1945 U.S.Code Cong.Service, p. 814; Dec. 16, 1944, 1944 U.S.Code Cong.Service, p. 1335.

§ 1401. Deduction of tax from wages

(a) **Requirement.** The tax imposed by section 1400 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid.

(b) **Indemnification of employer.** Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) **Adjustments.** If more or less than the correct amount of tax imposed by section 1400 is paid with respect to any payment of remuneration, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter.

(d) Special refunds

(1) **Wages received before 1947.** If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment during such year exceed \$3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400, deducted from such wages and paid to the collector, which

exceeds the tax with respect to the first \$3,000 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (A) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which the wages are received with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. No refund shall be made under this paragraph with respect to wages received after December 31, 1946.

(2) **Wages received during 1947, 1948, 1949, and 1950.** If by reason of an employee receiving wages from more than one employer during the calendar year 1947, 1948, 1949, or 1950, the wages received by him during such year exceed \$3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400 and deducted from the employee's wages (whether or not paid to the collector), which exceeds the tax with respect to the first \$3,000 of such wages received.

(3) **Wages received after 1950.** If by reason of an employee receiving wages from more than one employer during any calendar year after the calendar year 1950, the wages received by him during such year exceed \$3,600, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400 and deducted from the employee's wages (whether or not paid to the collector), which exceeds the tax with respect to the first \$3,600 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (A) the employer makes a claim, establishing his right thereto, after the calendar year in which the wages were received with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which such wages were received or, in the case of any agreement (or modification thereof) pursuant to section 218 of the Social Security Act which is effective as of a date more than two years prior to the date such agreement (or modification) was agreed to, within two years after the calendar year in which such agreement (or modification) was agreed to by the State and the Secretary of Health, Education, and Welfare. No interest shall be allowed or paid with respect to any such refund.

(4) **Special rules in the case of federal and state employees.** (A) **Federal Employees.**—In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year after the calendar year 1950, each head of a Federal agency or instrumentality who makes a return pursuant to section 1420 (e) and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for the purposes of subsection (c) and paragraph (3) of this subsection, be deemed a separate employee; and the term "wages" includes, for the purposes of paragraph (3) of this subsection, the amount, not to exceed \$3,600, determined by each such head or agent as constituting wages paid to an employee.

(B) **State Employees.**—For the purposes of paragraph (3) of this subsection, in the case of remuneration received during any calendar year after the calendar year 1950, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the fore-

going; the term "tax" or "tax imposed by section 1400" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 1400, if such services constituted employment as defined in section 1426; and the provisions of paragraph (3) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary of the Treasury. 53 Stat. 175, amended Aug. 10, 1939, c. 666, Title VI, § 602, 53 Stat. 1382; Aug. 10, 1946, c. 951, Title IV, § 413, 60 Stat. 990; Aug. 28, 1950, c. 809, Title II, § 203(b, c), 64 Stat. 527; Sept. 1, 1954, c. 1206, Title II, § 202(a) (2), 68 Stat. 1090.

Historical Note

References in Text. "Section 218 of the Social Security Act" referred to in subsecs. (d) (3), (4), is classified to section 418 of Title 42, The Public Health and Welfare.

1954 Amendment. Subsec. (d) (3) amended by Act Sept. 1, 1954, to allow a special refund in the case of employees of a State or political subdivision whose services are covered by agreement under the Social Security system, if claim for such refund is made within two years after the end of the calendar year in which the agreement was made.

1950 Amendments. Subsec. (d) (2) amended by Act Aug. 28, 1950, § 203(b), to limit its scope to wages received during calendar years 1947-1949.

Subsecs. (d) (3) and (d) (4) added by Act Aug. 28, 1950, § 203(c).

1946 Amendment. Subsec. (d) amended by Act Aug. 10, 1946, so that, beginning with the calendar year 1947, the right of an employee to a refund will depend on the wages received by him during a calendar year instead of the

wages received with respect to employment during that year.

1939 Amendment. Subsec. (c) amended by Act Aug. 10, 1939, which authorized adjustments without being limited to subsequent wage payments to the same individual by the same employer.

Subsec. (d) added by Act Aug. 10, 1939.

Effective Date of 1934 Amendment. Section 202(d) of Act Sept. 1, 1934, provided in part that: "The amendment made by subsection (a) (2) [to subsec. (d) (3)] shall be effective as if it had been enacted as a part of section 203(c) of the Social Security Act Amendments of 1950 which added section 1401(d) (3) to the Internal Revenue Code of 1939 [subsec. (d) (3) of this section]."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S. Code Cong Service, p. 1510.

§ 1402. Non-deductibility of tax from net income

For the purposes of the income tax imposed by chapter 1 or by any act of Congress in substitution therefor, the tax imposed by section 1400 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages. 53 Stat. 175.

§ 1403. Receipts for employees

(a) Requirement. Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing the wages paid by him to the employee before January 1, 1951. (For corresponding provisions with respect to wages paid after December 31, 1950, see section 1633.) Each statement shall cover a calendar year or one, two, three, or four calendar quarters, whether or not within the same calendar year, and shall show the name of the employer, the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of the tax imposed by section 1400 with respect to such wages. Each statement shall be furnished to the employee not later than the last day of the second calendar month following the period covered by the statement, except that, if the employee leaves the employ of the employer,

the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the date of payment of the wages, in lieu of the period covered by the statement.

(b) **Penalty for failure to furnish.** Any employer who wilfully fails to furnish a statement to an employee in the manner, at the time, and showing the information, required under subsection (a), shall for each such failure be subject to a civil penalty of not more than \$5. Added Aug. 10, 1939, c. 666, Title VI, § 603, 53 Stat. 1382, amended Aug. 28, 1950, c. 809, Title II, § 206(b) (2), 64 Stat. 538.

Historical Note

1950 Amendment. Subsec. (a) amended only with respect to wages paid after Dec. 31, 1950, struck out former first sentence and inserted new provisions.

Effective Date of 1950 Amendment. Amendment of subsec. (a) as applicable

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

PART II.—TAX ON EMPLOYERS

§ 1410. Rate of tax

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 1426(a)) paid by him after December 31, 1936, with respect to employment (as defined in section 1426(b)) after such date:

(1) With respect to wages paid during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.

(2) With respect to wages paid during the calendar years 1950 to 1953, both inclusive, the rate shall be 1½ per centum.

(3) With respect to wages paid during the calendar years 1954 to 1959, both inclusive, the rate shall be 2 per centum.

(4) With respect to wages paid during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ per centum.

(5) With respect to wages paid during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 per centum.

(6) With respect to wages paid after December 31, 1969, the rate shall be 3¼ per centum. 53 Stat. 175, amended Aug. 10, 1939, c. 666, Title VI, § 604, 53 Stat. 1383; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VII, § 701(b), 56 Stat. 981; Dec. 22, 1943, c. 375, § 3(b), 57 Stat. 607; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title IX, § 901(b), 58 Stat. 93; Dec. 16, 1944, c. 600, § 1(b), 58 Stat. 813; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title IV, § 401(b), 59 Stat. 576; Aug. 10, 1946, c. 951, Title I, § 102, 60 Stat. 978; Aug. 6, 1947, c. 510, § 2, 61 Stat. 793; Aug. 28, 1950, c. 809, Title II, § 201(b), 64 Stat. 524.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by increasing the rate of the employer's and employees' taxes as of Jan. 1, 1951.

1947 Amendment. Clauses (1), (2), and (3) amended by Act Aug. 6, 1947, which continued the 1 per cent rate through 1949 in clause (1), reduced rate to 1½

per cent through 1951 in clause (2), and reduced rate to 2 per cent after Dec. 31, 1951 in clause (3).

1946 Amendment. Clauses (1) and (2) amended by Act Aug. 10, 1946, which continued the 1 per cent. rate through 1947 and deferred application of the $2\frac{1}{2}$ per cent. rate until 1948.

1945 Amendment. Clauses (1) and (2) amended by Act Nov. 8, 1945, which continued the 1 per cent rate through the calendar year 1946 and made the $2\frac{1}{2}$ per cent rate applicable to wages paid during the calendar years 1947 and 1948.

1944 Amendments. Act Dec. 16, 1944, amended section by freezing the rate at 1 per centum for the year 1945, and renumbered clauses (1)-(4) to be clauses (1)-(3).

Clauses (1) and (2) amended by Act Feb. 25, 1944, which provided for the freezing of the rate of 1 per centum for 1944.

1943 Amendment. Clauses (1) and (2) amended by Joint Res. Dec. 22, 1943, which provided for the freezing of the rate of 1 per centum for the first two months of 1944.

1942 Amendment. Clauses (1) and (2) amended by Act Oct. 21, 1942, which provided for the freezing of the rate of 1 per centum for 1943.

1939 Amendment. Act Aug. 10, 1939, renumbered clauses (1)-(5) to be clauses (1)-(4), substituted "wages paid" for "employment" in all clauses, and reduced rate for years 1940, 1941, and 1942, from $1\frac{1}{2}$ to 1 per cent.

Hurricane Salvage and Repair Work. Act Aug. 11, 1939, c. 719, § 2, 53 Stat. 1420, provided that services rendered in hurricane salvage and repair work rendered prior to Jan. 1, 1940 was not subject to taxation under former sections 1001-1011, and 1101-1110 of Title 42, the Public Health and Welfare, or sections 1400 et seq. and 1600 et seq. of I.R.C. 1939.

Successor Corporation Relieved From Taxes. Section 209(e) of Act Aug. 28, 1950, provided that:

"If a corporation (hereinafter referred to as a predecessor) incorporated under

the laws of one State is succeeded after 1945 and before 1951 by another corporation (hereinafter referred to as a successor) incorporated under the laws of another State, and if immediately upon the succession the business of the successor is identical with that of the predecessor and, except for qualifying shares, the proportionate interest of each shareholder in the successor is identical with his proportionate interest in the predecessor, and if in connection with the succession the predecessor is dissolved or merged into the successor, and if the predecessor and the successor are employers under the Federal Insurance Contributions Act [sections 1400-1432 of I.R.C. 1939] and the Federal Unemployment Tax Act [sections 1600-1610 of I.R.C. 1939] in the calendar year in which the succession takes place, then—

"(1) the predecessor and successor corporations, for purposes only of the application of the \$3,000 limitation in the definition of wages under such Acts, shall be considered as one employer for such calendar year, and

"(2) the successor shall, subject to the applicable statutes of limitations, be entitled to a credit or refund, without interest, of any tax under section 1410 of the Federal Insurance Contributions Act [section 1410 of I.R.C. 1939] or section 1600 of the Federal Unemployment Tax Act [section 1600 of I.R.C. 1939] (together with any interest or penalty thereon) paid with respect to remuneration paid by the successor during such calendar year which would not have been subject to tax under such Acts if the remuneration had been paid by the predecessor."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287. See, also, Acts Aug. 6, 1947, 1947 U.S. Code Cong. Service, p. 1641; Aug. 10, 1946, 1946 U.S. Code Cong. Service, p. 1510; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; Dec. 16, 1944, 1944 U.S. Code Cong. Service, p. 1335.

§ 1411. Adjustment of tax

If more or less than the correct amount of tax imposed by section 1410 is paid with respect to any payment of remuneration, proper adjustments with respect to the tax shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter. For the purposes of this section, in the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year after the calendar year 1950, each head of a Federal agency or instrumentality who makes a return pursuant to section 1420(e) and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer. 53 Stat. 176, amended Aug. 10, 1939, c. 666, Title VI, § 605, 53 Stat. 1383; Aug. 28, 1950, c. 809, Title IX, § 202(c), 64 Stat. 525.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by adding sentence beginning "For the purposes".

1939 Amendment. Act Aug. 10, 1939, authorized adjustments without being limited to subsequent wage payments to the same individual by the same employer.

Effective Date of 1950 Amendment. Amendment of section by Act Aug. 28, 1950, as applicable only with respect to remuneration paid after 1950, see note set out under section 1412 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1412. Instrumentalities of the United States

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 1410 unless such other provision of law grants a specific exemption, by reference to section 1410, from the tax imposed by such section. Added Aug. 28, 1950, c. 809, Title II, § 202(a), 64 Stat. 524.

Historical Note

Effective Date. Section 202(d) of Act Aug. 28, 1950, provided that this section and amendments to sections 1411 and

1420(e) should be applicable only with respect to remuneration paid after 1950.

PART III.—GENERAL PROVISIONS

§ 1420. Collection and payment of taxes

(a) **Administration.** The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) **Addition to tax in case of delinquency.** If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401(c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

(c) **Method of collection and payment.** Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this subchapter (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner, with the approval of the Secretary.

(d) **Fractional parts of a cent.** In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) **Federal service.** In the case of the taxes imposed by this subchapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, the determination whether an individual has performed service which constitutes employment as defined in section 1426, the determination of the amount of remuneration for such service which constitutes wages as defined in such section, and the return and payment of the taxes imposed by this subchapter, shall be made by the head of the

Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 1410 with respect to such service without regard to the \$3,600 limitation in section 1426(a) (1), and he shall not be required to obtain a refund of the tax paid under section 1410 on that part of the remuneration not included in wages by reason of section 1426(a) (1). The provisions of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this subsection the Secretary of Defense shall be deemed to be the head of such instrumentality. 53 Stat. 176, amended Aug. 28, 1950, c. 809, Title II, § 202(b), 64 Stat. 524.

Historical Note

1950 Amendment. Subsec. (e) added by Act Aug. 28, 1950.

Effective Date of 1950 Amendment. Amendment of subsec. (e) of this section by Act Aug. 28, as applicable only with respect to remuneration paid after 1950, see note set out under section 1412 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 1421. Overpayments and underpayments

If more or less than the correct amount of tax imposed by section 1400 or 1410 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot be adjusted under section 1401(c) or 1411 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this subchapter. 53 Stat. 176.

§ 1422. Erroneous payments

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter B upon such taxpayer, and the balance, if any, shall be refunded. 53 Stat. 176.

§ 1423. Sale of stamps by postmasters

(a) **Supply.** The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 1420(c) for the collection or payment of any tax imposed by this subchapter, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary to the Postmaster General as necessary to the proper administration of this subchapter.

(b) **Bond and accounting.** The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General

at such times and in such form as the Postmaster General may by regulations prescribe.

(c) Deposit of receipts. The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collections all receipts so deposited. 53 Stat. 177.

§ 1424. Expenditures incurred by the Post Office Department

The Postmaster General shall at least once a month transfer to the Treasury, together with the receipts required to be deposited under section 1423, a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this subchapter, and the Secretary shall be authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this subchapter, such sums as may be required for such additional expenditures incurred by the Post Office Department. 53 Stat. 177.

§ 1425. Penalties relating to stamps and other collection devices

(a) Unauthorized use, sale, etc. Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this subchapter or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner under section 1420(c) for the collection or payment of any tax imposed by this subchapter, shall be fined not more than \$1,000 or imprisoned for not more than six months, or both.

(b) Counterfeiting, etc. Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner under section 1420(c) for the collection or payment of any tax imposed by this subchapter, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. 53 Stat. 177.

§ 1426. Definitions

When used in this subchapter—

(a) Wages. The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$3,600 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$3,600 to such individual during such calendar year, any remuneration (other than remuneration referred to in the suc-

ceeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6);

(6) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400, or (B) of any payment required from an employee under a State unemployment compensation law;

(7) (A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in the quarter for such service is less than \$50 or the employee is not regularly employed by the employer in such quarter of payment. For the purposes of this subparagraph, an employee shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during the quarter the employee performs for the employer for some portion of the day domestic service in a private home of the employer, or (ii) the employee was regularly employed (as determined under clause (i)) by the employer in the performance of such service during the preceding calendar quarter. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (h) (5);

(8) Remuneration paid in any medium other than cash for agricultural labor;

(9) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made; or

(10) Remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d) (3) (C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50.

(b) **Employment.** The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (i) of this section); except that, in the case of service performed after 1950, such term shall not include—

(1) (A) Agricultural labor (as defined in subsection (h) of this section) performed in any calendar quarter by an employee, unless the cash remuneration paid for such labor (other than service described in subparagraph (B)) is \$50 or more and such labor is performed for an employer by an individual who is regularly employed by such employer to perform such agricultural labor. For the purposes of this subparagraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(i) such individual performs agricultural labor (other than service described in subparagraph (B)) for such employer on a full-time basis on sixty days during such quarter, and

(ii) the quarter was immediately preceded by a qualifying quarter. For the purposes of the preceding sentence, the term "qualifying quarter" means (I) any quarter during all of which such individual was continuously employed by such employer, or (II) any subsequent quarter which meets the test of clause (i) if, after the last quarter during all of which such individual was continuously employed by such employer, each intervening quarter met the test of clause (i). Notwithstanding the preceding provisions of this subparagraph, an individual shall also be deemed to be regularly employed by an employer during a calendar quarter if such individual was regularly employed (upon application of clauses (i) and (ii)) by such employer during the preceding calendar quarter.

(B) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton;

(C) Service performed by foreign agricultural workers under contracts entered into in accordance with subchapter IV of chapter 35H of Title 7;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such

quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (h) (5);

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if the individual is employed on and in connection with such vessel or aircraft when outside the United States;

(6) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 by virtue of any provision of law which specifically refers to such section in granting such exemption;

(7) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 on December 31, 1950, except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a national farm loan association, a production credit association, a Federal Reserve Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration; or

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner, of or to the Congress;

(ii) in the legislative branch;

(iii) in the field service of the Post Office Department unless performed by any individual as an employee who is excluded by Executive order from the operation of the Civil Service Retirement Act of 1930 because he is serving under a temporary appointment pending final determination of eligibility for permanent or indefinite appointment;

(iv) in or under the Bureau of the Census of the Department of Commerce by temporary employees employed for the taking of any census;

(v) by any individual as an employee who is excluded by Executive order from the operation of the Civil Service Retirement Act of 1930 because he is paid on a contract or fee basis;

(vi) by any individual as an employee receiving nominal compensation of \$12 or less per annum;

(vii) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(viii) by any individual as a consular agent appointed under authority of section 551 of the Foreign Service Act of 1946 (22 U.S.C.A., sec. 951);

(ix) by any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U.S.C., sec. 1052);

(x) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(xi) by any individual as an employee who is employed under a Federal relief program to relieve him from unemployment;

(xii) as a member of a State, county, or community committee under the Production and Marketing Administration or of any other board, council, committee, or other similar body, unless such board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(xiii) by an individual to whom the Civil Service Retirement Act of 1930 does not apply because such individual is subject to another retirement system;

(8) Service (other than service which, under subsection (k), constitutes covered transportation service) performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;

(9) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(B) Service performed in the employ of a religious, charitable, educational, or other organization exempt from income tax under section 101 (6), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (l), is in effect if such service is performed by an employee (i) whose signature appears on the list filed by such organization under subsection (l), or (ii) who became an employee of such organization after the calendar quarter in which the certificate was filed;

(10) Service performed by an individual as an employee or employee representative as defined in section 1532;

(11) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if the remuneration for such service is less than \$50;

(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(12) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(13) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality

and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(15) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(16) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(17) Service performed in the employ of an international organization.

(c) **Included and excluded service.** If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (10) of subsection (b).

(d) **Employee.** The term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, bev-

erages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him, if the performance of such services is subject to licensing requirements under the laws of the State in which such services are performed; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) *State, etc.* (1) The term "State" includes Alaska, Hawaii, the District of Columbia, and the Virgin Islands; and on and after the effective date specified in section 3810 such term includes Puerto Rico.

(2) *United States.* The term "United States" when used in a geographical sense includes the Virgin Islands; and on and after the effective date specified in section 3810 such term includes Puerto Rico.

(3) *Citizen.* An individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) and who is not a resident of the United States shall not be considered, for the purposes of this section, as a citizen of the United States prior to the effective date specified in section 3810.

(f) *Person.* The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(g) *American vessel and aircraft.* The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(h) *Agricultural labor.* The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in

salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market, or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar quarter in which such service is performed.

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(i) American employer. The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States, (3) a partnership, if two-thirds or more of the partners are residents of the United States, (4) a trust, if all of the trustees are residents of the United States, or (5) a corporation organized under the laws of the United States or of any State.

(J) Computation of wages in certain cases. For purposes of this subchapter, in the case of domestic service described in subsection (a) (7) (B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a) (7) (B).

(k) Covered transportation service.

(1) Existing transportation systems—General rule. Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation

system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Existing transportation systems. Cases in which no transportation employees, or only certain employees, are covered.—Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951; except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision, the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950. All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) Definitions. For the purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of

such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(1) Exemption of religious, charitable, etc., organizations.

(1) **Waiver of exemption by organization.** An organization exempt from income tax under section 101(6) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this subchapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees and that at least two-thirds of its employees concur in the filing of the certificate. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee who concurs in the filing of the certificate. Such list may be amended, at any time prior to the expiration of the first month following the first calendar quarter for which the certificate is in effect, by filing with such official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this subchapter. The certificate shall be in effect (for the purposes of subsection (b) (9) (B) and for the purposes of section 210(a) (9) (B) of the Social Security Act) for the period beginning with the first day following the close of the calendar quarter in which such certificate is filed, but in no case shall such period begin prior to January 1, 1951. The period for which the certificate is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than eight years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this subchapter.

(2) **Termination of waiver period by commissioner.** If the Commissioner finds that any organization which filed a certificate pursuant to this subsection has failed to comply substantially with the requirements of this subchapter or is no longer able to comply therewith, the Commissioner shall give such organization not less than sixty days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Commissioner by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph ~~to the~~ organization without the prior concurrence of the Federal Security Administrator.

(3) **No renewal of waiver.** In the event the period covered by a certificate filed pursuant to this subsection is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection. 53 Stat. 177, amended Aug. 10, 1939, c. 666, Title VI, § 606, 53 Stat. 1383; Mar. 24, 1943, c. 26, § 1(b) (1), 57 Stat. 46; Apr. 4, 1944, c. 161, § 1, 58 Stat. 188; Mar. 24, 1945, c. 36, § 1(a), 59 Stat. 38; Oct. 23, 1945, c. 433, § 7(a), 59 Stat. 548; Dec. 29, 1945, c. 652, Title I, § 4(c), 59 Stat. 670; Aug. 10, 1946, c. 951, Title IV, § 412(a), 60 Stat. 989; Apr. 20, 1948, c. 222, § 1(a), 62 Stat. 195; June 14, 1948,

c. 468, § 1(a), 62 Stat. 438; Aug. 28, 1950, c. 809, Title II, §§ 203(a), 204(a-f), 205(a), 64 Stat. 528, 536; Oct. 31, 1949, c. 792, Title V, § 505(b) as added July 21, 1951, c. 223, 65 Stat. 120.

Historical Note

References in Text. "Section 15(g) of the Agricultural Marketing Act, as amended," referred to in subsecs. (b) (1) (B) and (h), is classified to section 1141j (g) of Title 12, Banks and Banking.

The "Civil Service Retirement Act of 1930," referred to in subsec. (b) (7) (C) (iii), (v) (xiii), is classified to sections 691, 693, 693-1, 707, 708, 709-715, 716 to 719-1, 720-722, 724, 725, 727-729, 730, 731, 733, 736b and 736c of Title 5, Executive Departments and Government Officers and Employees.

"Section 551 of the Foreign Service Act of 1946", referred to in subsec. (b) (7) (C) (viii), is classified to section 951 of Title 22, Foreign Relations and Inter-course.

"Section 2 of the Act of August 4, 1947", referred to in subsec. (b) (7) (C) (ix) is classified to section 1052 of Title 5, Executive Departments and Government Officers and Employees.

"Section 218 of the Social Security Act", referred to in subsecs. (k) (1) (D) and (k) (4), is classified to section 418 of Title 42, The Public Health and Welfare.

"Title II of the Social Security Act", referred to in subsec. (l), is classified to subchapter II of chapter 7 of said Title 42.

"Section 210(a) (9) (B) of the Social Security Act", referred to in subsec. (l), is classified to section 410(a) (9) (B) of said Title 42.

1951 Amendment. Subsec. (a) (1) amended by section 505(b) of Act Oct. 31, 1949, as added by Act July 12, 1951, which added subparagraph "(C)".

1950 Amendments. Subsec. (a) amended by Act Aug. 28, 1950, § 203(a), to re-define wages and increase the tax base from \$3000 to \$3600.

Subsec. (b) amended by Act Aug. 28, 1950, § 204(a), to redefine the term "employment."

Subsec. (c) amended by Act Aug. 28, 1950, § 204(f), which substituted "paragraph 10" for "paragraph 9".

Subsec. (d) amended by Act Aug. 28, 1950, § 205(a), to redefine the term "employee".

Subsec. (e) amended by Act Aug. 28, 1950, § 204(b), to redefine "State", and to define "United States", and "citizen".

Subsec. (g) amended by Act Aug. 28, 1950, § 204(c), to add definition of "American aircraft".

Subsec. (h) amended by Act Aug. 28, 1950, § 204(d), to redefine "agricultural labor".

Subsec. (i) amended by Act Aug. 28, 1950, § 204(e), which struck out former subsec. (i) relating to "Officers and crew members employed by War Shipping Ad-

ministration" and inserted new provisions relating to "American employer".

Subsec. (j) amended by Act Aug. 28, 1950, § 204(e), which struck out former subsec. (j) relating to employees of Bonneville Power Administrator and inserted new provisions relating computation of wages in certain cases.

Subsec. (k) added by Act Aug. 28, 1950, § 204(e).

1948 Amendment. Subsec. (b) (15) amended by Act Apr. 20, 1948, which inserted subpar. (B).

Subsec. (d) amended by Act June 14, 1948, to provide for the application of the usual common-law rules in determining whether a person is an employee.

1946 Amendment. Subsec. (a) (1) amended by Act Aug. 10, 1946, so that beginning Jan. 1, 1947, the amount paid during a calendar year, instead of the amount paid with respect to employment during that year, will be the basis for exclusion from wages under that par.

1945 Amendment. Subsec. (b) amended by Act Dec. 29, 1945, which struck out "or" following semicolon in subdiv. (14), struck out period and inserted "; or" in subdiv. (15), and added subdiv. (16).

Subsec. (l) amended by Act Mar. 24, 1945, which added last sentence.

Subsec. (j) added by Act Oct. 23, 1945.

1944 Amendment. Subsec. (i) amended by Act Apr. 4, 1944, which inserted a comma and "but shall not * * * War Shipping Administration" preceding period at end of first sentence.

1943 Amendment. Subsec. (i) added by Act Mar. 24, 1943.

1939 Amendment. Act Aug. 10, 1939, amended section generally.

Effective Date of 1950 Amendment of Subsec. (a). Section 203(d) of Act Aug. 28, 1950, provided that: "The amendment made by subsection (a) of this section shall be applicable only with respect to remuneration paid after 1950. In the case of remuneration paid prior to 1951, the determination under section 1426(a) (1) of the Internal Revenue Code [subsec. (a) (1) of this section] (prior to its amendment by this Act) of whether or not such remuneration constituted wages shall be made as if subsection (a) of this section had not been enacted and without inferences drawn from the fact that the amendment made by subsection (a) is not made applicable to periods prior to 1951."

Effective Date of 1950 Amendments of Subsecs. (b) and (e). Section 204(a), (b), of Act Aug. 28, 1950, provided in part that the effective date of amendments of

subsecs. (b) and (c) of this section by said Act Aug. 28, 1950 should be effective as of Jan. 1, 1951.

Effective Date of 1950 Amendment of Subsec. (d). Section 205(b) of Act Aug. 28, 1950, provided that the amendment of subsec. (d) should be applicable only with respect to services performed after 1950.

Effective Date of 1950 Amendments of Subsecs. (g)-(k). Section 204(g) of Act Aug. 28, 1950, provided that the amendments to subsecs. (g)-(k) should be applicable only with respect to services performed after 1950.

Effective Date of 1948 Amendments. Section 1(b) of Act June 14, 1948, provided that: "The amendments made by subsection (a) [of section 1 of Act June 14, 1948], shall have the same effect as if included in the Internal Revenue Code on February 10, 1939, the date of its enactment."

Section 1(b) of Act Apr. 20, 1948, provided in part that: "The amendment, made to section 1426(b) (15) of the Internal Revenue Code [this section] shall be applicable with respect to services performed after December 31, 1939."

Effective Date of 1945 Amendments. Amendment of subsec. (b) by Act Dec. 29, 1945, § 4(c), was made effective as of Jan. 1, 1946, by section 4(c) thereof.

Subsec. (b) of section 1 of Act Mar. 24, 1945, provided that amendment should be effective as if made by section 1(b) (1) of Act Mar. 24, 1943.

Effective Date of 1939 Amendment. Amendment by Act Aug. 10, 1939, was made effective Jan. 1, 1940, by section 606 of said Act.

Expiration Date of Former Subsec. (l). Subsection (l) of this section, as added by former section 1291(b) (1) of Appendix to Title 50, War and National Defense, relating to officers and crew members employed by War Shipping Administration, has expired since section 202 of Act July 8, 1946, c. 543, Title II, 60 Stat. 501, terminated the War Shipping Administration as of Sept. 1, 1946, and transferred all functions, powers, duties, etc. to the United States Maritime Commission for the period from Sept. 1, 1946, to Dec. 31, 1946, for the purpose of liquidating the Administration and the provision was also stricken by Act Aug. 28, 1950, § 204(e).

Repeals. Subsec. (b) (4), as it existed prior to amendment by section 606 of Act Aug. 10, 1939, was repealed "as of effective date thereof" by section 905(a) of said act. See note hereto.

Section 902(f) of Act Aug. 10, 1939, provided: "No tax shall be collected under Title VIII [former section 1001 et seq. of Title 42] or IX [former section 1101 et seq. of Title 42] of the Social Security Act or under the Federal Insurance Contributions Act [section 1400 et seq. of I.R.C.1939] or the Federal Unemployment Tax Act [section 1600 et seq. of I.R.C.

1939], with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections 1426(b) and 1607(c) of the [1939] Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any), shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under Title II of the Social Security Act [section 401 et seq. of Title 42] with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of section 209(b) of such Act, as amended."

Act Aug. 10, 1939, c. 666, Title IX, § 905, 53 Stat. 1400, provided: "(a) No service performed at any time during the calendar year 1939 by any individual shall, by reason of the individual having attained the age of sixty-five, be excepted from employment as defined in section 1426(b) of subchapter A of chapter 9 of the Internal Revenue Code [section 1426 of I.R.C.1939]. Paragraph (4) of such section (which excepts such service from employment) is repealed as of the effective date thereof, and paragraph (4) of section 811(b) of the Social Security Act [former section 1011 of Title 42] is repealed as of January 1, 1939. The tax on employees imposed by section 1400 of such subchapter and the tax on employers imposed by section 1410 of such subchapter, and the provisions of law applicable to such taxes, shall apply with respect to remuneration paid after December 31, 1938, for service which, by reason of the enactment of this section, constitutes employment as so defined.

"(b) Notwithstanding any other provision of law, no employer shall be liable for the tax on any employee, imposed by section 1400 of such subchapter (unless the employer collects such tax from the employee), with respect to service performed before the date of enactment of this Act which constitutes employment by reason of the enactment of this section, except to the extent that the employer has under his control at any time on or after the ninetieth day after such date amounts of remuneration earned at any time by the employee."

Service for Certain Tax-Exempt Organizations Performed After 1950 and Prior to 1955. Section 403 of Act Sept. 1, 1954, c. 1206, Title IV, 68 Stat. 1098, 1099, provided that:

"(a) In any case in which—
 "(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of this Act [Sept. 1, 1954], by an organization which is exempt from income tax under section 101 (6) of the Internal Revenue Code of 1939 but which has failed to file prior to the enactment of this Act [Sept. 1, 1954] a waiver certificate under section 1426(7) (1) of the Internal Revenue Code of 1939;

"(2) the service performed by such individual as an employee of such organization during the period subsequent to 1950 and prior to 1939 would have constituted employment (as defined in section 210 of the Social Security Act [section 410 of Title 42] and section 1426(b) of the Internal Revenue Code of 1939 [subsec. (b) of this section]) if such organization had filed prior to the performance of such service such a certificate accompanied by a list of the signatures of employees who concurred in the filing of such certificate and such individual's signature had appeared on such list;

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 have been paid with respect to any part of the remuneration paid to such individual by such organization for such service;

"(4) part of such taxes have been paid prior to the enactment of this Act [Sept. 1, 1954];

"(5) so much of such taxes as have been paid prior to the enactment of this Act [Sept. 1, 1954] have been paid by such organization in good faith and upon the assumption that a waiver certificate had been filed by it under section 1426(l) (1) of the Internal Revenue Code of 1939 [subsec. (l) (1) of this section]; and

"(6) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed in such form and manner, and with such official, as may be prescribed by regulations made under subchapter A of Chapter 9 of the Internal Revenue Code of 1939 [this subchapter]), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [section 410 of Title 42] and section 1426(b) of the Internal Revenue Code of 1939 [subsec. (b) of this section].

"(b) In any case in which—

"(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of this Act [Sept. 1, 1954], by an organization which has filed a waiver certificate under section 1426(l) (1) of the Internal Revenue Code of 1939;

"(2) the service performed by such individual during the time he was so employed would have constituted employment (as defined in section 210 of the Social Security Act [section 410 of Title 42] and section 1426(b) of the Internal Revenue Code of 1939 [subsec. (b) of

this section]) if such individual's signature had appeared on the list of signatures of employees who concurred in the filing of such certificate;

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 have been paid prior to the enactment of this Act with respect to any part of the remuneration paid to such individual by such organization for such service; and

"(4) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed on or before January 1, 1937, and in such form and manner, and with such official, as may be prescribed by regulations made under subchapter A of Chapter 9 of the Internal Revenue Code of 1939 [this subchapter]), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [section 410 of Title 42] and section 1426(b) of the Internal Revenue Code of 1939 [subsec. (b) of this section], and such individual shall be deemed to have concurred in the filing of the waiver certificate filed by such organization under section 1426(l) (1) of the Internal Revenue Code of 1939 [subsec. (l) (1) of this section]."

Refunds or Credits for Overpayments. Section 3 of Act Apr. 20, 1948, provided that: "If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [to this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act July 12, 1951, see 1951 U.S.Code Cong.Service, p. 1569. See, also Acts June 14, 1948, 1948 U.S.Code Cong.Service, p. 1752; Apr. 20, 1948, 1948 U.S.Code Cong.Service, p. 1473; Aug. 10, 1946, 1946 U.S.Code Cong.Service, p. 1510; Dec. 29, 1945, 1945 U.S.Code Cong.Service, p. 946; Oct. 3, 1945, 1945 U.S.Code Cong.Service, p. 874; Apr. 4, 1944, 1944 U.S.Code Cong.Service, p. 1016; Mar. 24, 1943, 1943 U.S.Code Cong.Service, pp. 2-10.

§ 1427. Deductions as constructive payments

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. 53 Stat. 178.

§ 1428. Estimate of revenue reduction

The Secretary at intervals of not longer than three years shall estimate the reduction in the amount of taxes collected under this subchapter by reason of the operation of paragraph (10) of subsection (b) of section 1426 and shall include such estimate in his annual report. 53 Stat. 178, amended Aug. 10, 1939, c. 666, Title IX, § 904, 53 Stat. 1400; Aug. 28, 1950, c. 809, Title II, § 204(f), 64 Stat. 536.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by substituting "paragraph 10" for "paragraph 9".

1939 Amendment. Act Aug. 10, 1939, amended section by substituting "paragraph (9)" for "paragraphs (9) and (10)".

Effective Date of 1939 Amendment. Section 904 of Act Aug. 10, 1939, provided

that the amendment of this section was made effective Jan. 1, 1940.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1429. Rules and regulations

The Secretary shall make and publish such rules and regulations, not inconsistent with this subchapter, as may be necessary to the efficient administration of the functions with which he is charged under this subchapter. The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter. 53 Stat. 178.

§ 1430. Other laws applicable

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter. 53 Stat. 178, amended Aug. 10, 1939, c. 666, Title IX, § 903, 53 Stat. 1400.

Historical Note

1939 Amendment. Act Aug. 10, 1939, inserted "3661" in lieu of "3762."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1431. Effective date of subchapter

This subchapter shall take effect on the first day of that quarter of the calendar year occurring next after the enactment of this title. 53 Stat. 179.

§ 1432. Short title

This subchapter may be cited as the "Federal Insurance Contributions Act." Added Aug. 10, 1939, c. 666, Title VI, § 607, 53 Stat. 1387.

SUBCHAPTER B.—EMPLOYMENT BY CARRIERS**PART I.—TAX ON EMPLOYEES**

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by Act Aug. 13, 1940, see note set out under this chapter preceding section 1400.

§ 1500

EMPLOYMENT TAXES

§ 1500. Rate of tax

In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of \$300 for any calendar month before July 1, 1954, and as is not in excess of \$350 for any calendar month after June 30, 1954:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¼ per centum;

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum. 53 Stat. 179, amended July 31, 1946, c. 709, § 3(a), 60 Stat. 723; Aug. 31, 1954, c. 1164, Pt. II, § 201, 68 Stat. 1040.

Historical Note

1954 Amendment. Act Aug. 31, 1954 amended section to increase, after June 30, 1954, the earnings base for purposes of the tax from \$300 to \$350.

1946 Amendment. Act July 31, 1946, increased the tax rates beginning with the calendar year 1947 and changed the basis of tax from compensation earned to compensation paid during the year.

Effective Date of 1954 Amendment. Amendment to section by Act Aug. 31, 1954, as effective July 1, 1954, see notes under section 228a of Title 45, Railroads.

Effective Date of 1946 Amendment. Section 402 of Act July 31, 1946, provided that amendments to this section and sections 1501(a), 1510, and 1520 of I.R.C.1939 by section 3(a)-(d) of that Act shall take effect January 1, 1947.

Remuneration Not Affected By Amendment. Section 402 of Act July 31, 1946,

provided in part: "Sections 1500, 1510, and 1520 of the Internal Revenue Code [1939] as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this Act are not applicable."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 3649. See, also, Act July 31, 1946, 1946 U.S. Code Cong. Service, p. 1316.

§ 1501. Deduction of tax from compensation

(a) **Requirement.** The tax imposed by section 1500 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than \$300 if such month is before July 1, 1954, or is less than \$350 if such month is after June 30, 1954, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for

services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month.

(b) **Indemnification of employer.** Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) **Adjustments.** If more or less than the correct amount of tax imposed by section 1500 is paid with respect to any compensation payment, then, under regulations made under this subchapter by the Commissioner, with the approval of the Secretary, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer. 53 Stat. 179, amended July 31, 1946, c. 709, § 3(b), 60 Stat. 723; Aug. 31, 1954, c. 1164, Pt. II, § 202, 68 Stat. 1040.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Aug. 31, 1954, which inserted after \$300 where it first appears the words "for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954," and where it appears the second time, the words "if such month is before July 1, 1954, or is less than \$350 if such month is after June 30, 1954."

1946 Amendment. Subsec. (a) amended by Act July 31, 1946, which changed second sentence to provide for the proportion of taxes to be deducted by each employer where compensation is paid by more than one employer.

Effective Date of 1954 Amendment. Amendment to section by Act Aug. 31,

1954, as effective July 1, 1954, see notes under section 228a of Title 45, Railroads.

Effective Date and Remuneration. Effective date and remuneration not affected by 1946 Amendment, see note under section 1500 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 3648. See, also, Act July 31, 1946, 1946 U.S. Code Cong. Service, p. 1316.

§ 1502. Overpayments and underpayments

If more or less than the correct amount of the tax imposed by section 1500 is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section 1501(c), the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary. 53 Stat. 179.

§ 1503. Non-deductibility of tax from net income

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the tax imposed by section 1500 shall not be allowed as a deduction to the taxpayer in computing his net income. 53 Stat. 179.

PART II.—TAX ON EMPLOYEE REPRESENTATIVES

§ 1510. Rate of tax

In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of \$300 for any calendar month before

§ 1510

EMPLOYMENT TAXES

July 1, 1954, and as is not in excess of \$350 for any calendar month after June 30, 1954:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;
2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;
3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum. 53 Stat. 180, amended July 31, 1946, c. 709, § 3(c), 60 Stat. 723; Aug. 31, 1954, c. 1164, Pt. II, § 203, 68 Stat. 1040.

Historical Note

1954 Amendment. Act Aug. 31, 1954, amended section to increase, after June 30, 1954, the earnings base for purposes of the tax from \$300 to \$350.

1946 Amendment. Act July 31, 1946, increased the tax rates beginning with the calendar year 1947 and changed the basis of tax from compensation earned to compensation paid during the year.

Effective Date of 1954 Amendment. Amendment to section by Act Aug. 31, 1954, as effective July 1, 1954, see notes under section 223a of Title 45, Railroads.

Effective Date and Remuneration. Effective date and remuneration not affected by 1946 amendment, see notes under section 1500 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 3649. See, also, Act July 31, 1946, 1946 U.S. Code Cong. Service, p. 1316.

§ 1511. Determination of compensation

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1532(a). 53 Stat. 180.

§ 1512. Non-deductibility of tax from net income

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the taxes imposed by section 1510 shall not be allowed as a deduction to the taxpayer in computing his net income. 53 Stat. 180.

PART III.—TAX ON EMPLOYERS

§ 1520. Rate of tax

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month before July 1, 1954, not in excess of \$300 and for any calendar month after June 30, 1954, not in excess of \$350: *Provided, however,* That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply, with respect to any calendar month before July 1, 1954, to not more than \$300, and with respect to any calendar month after June 30, 1954, to not more than \$350, of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such com-

pensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than \$300 if the month is before July 1, 1954, or is less than \$350 if the month is after June 30, 1954, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5% per centum;
2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;
3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum. 53 Stat. 180, amended July 31, 1946, c. 709, § 3(d), 60 Stat. 724; Aug. 31, 1954, c. 1164, Pt. II, § 204, 68 Stat. 1040.

Historical Note

1954 Amendment. Act Aug. 31, 1954, amended section to increase, after June 30, 1954, the earnings base for purposes of the tax from \$300 to \$350.

1946 Amendment. Act July 31, 1946, amended section by increasing tax rates beginning with the calendar year 1947, changed the basis of tax from compensation paid for services rendered during the year to compensation paid during the year, and changed the method of prorating taxes among employers when one is a railway labor organization.

Effective Date of 1954 Amendment. Amendment to section by Act Aug. 31, 1954, as effective July 1, 1954, see notes under section 228a of Title 45, Railroads.

Effective Date and Remuneration. Effective date and remuneration not affected by 1946 amendment, see notes under section 1500 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 3649. See, also, Act July 31, 1946, 1946 U.S.Code Cong.Service, p. 1316.

§ 1521. Adjustments

If more or less than the correct amount of the tax imposed by section 1520 is paid with respect to any compensation payment, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer. 53 Stat. 181.

§ 1522. Overpayments and underpayments

If more or less than the correct amount of the tax imposed by section 1520 is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section 1521, the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary. 53 Stat. 181.

PART IV.—GENERAL PROVISIONS

§ 1530. Collection and payment of taxes

(a) **Administration.** The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) **Time and manner of payment.** The taxes imposed by this subchapter shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this subchapter as may be prescribed by the Commissioner with the approval of the Secretary.

(c) **Addition to tax in case of delinquency.** If a tax imposed by this subchapter is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this subchapter) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(d) **Fractional parts of a cent.** In the payment of any tax under this subchapter, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. 53 Stat. 181.

§ 1531. Erroneous payments

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter A upon such taxpayer, and the balance, if any, shall be refunded. 53 Stat. 181.

§ 1532. Definitions

As used in this subchapter—

(a) **Employer.** The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State

and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) **Employee.** The term "employee" means any individual in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) **Employee representative.** The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and

designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U.S.C., Title 45, c. 18 1), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) **Service.** An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (c) of section 1 of the Railroad Retirement Act of 1937 shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) **Compensation.** The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation

which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 1500 and 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$3 and (1) such compensation is earned before April 1, 1940, and the taxes thereon under such sections are not paid before July 1, 1940, or (2) such compensation is earned after March 31, 1940.

A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this subchapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(f) **United States.** The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(g) **Company.** The term "company" includes corporations, associations, and joint-stock companies.

(h) **Carrier.** The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(i) **Person.** The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation. 53 Stat. 181, amended June 11, 1940, c. 307, § 3, 54 Stat. 264; Aug. 13, 1940, c. 664, §§ 1, 3, 54 Stat. 785, 786, eff. Feb. 10, 1939; Oct. 10, 1940, c. 842, § 27 (a), 54 Stat. 1101; Apr. 8, 1942, c. 227, § 14, 56 Stat. 209; July 31, 1946, c. 709, §§ 1, 3(e), (f), 60 Stat. 722, 724, 725; Aug. 31, 1954, c. 1164, Pt. II, § 205, 68 Stat. 1040.

1 So in original but probably should read "(U.S.C., Title 45, c. 8)."

Historical Note

References in Text. The Railway Labor Act, as amended, referred to in subsec. (a), is classified to chapter 8 of Title 45, Railroads.

Section 6 of the Railroad Retirement Act of 1937, referred to in subsec. (b), is classified to section 228f of Title 45, Railroads.

Subsec. (c) of section 1 of the Railroad Retirement Act of 1937, referred to in subsec. (d), is classified to section 228a(c) of Title 45, Railroads.

The Railroad Retirement Act, referred to in subsec. (e), is classified to sections 228a to 228c-1, 228e-228h, 228i-228p, and 228r to 228s-1 of Title 45, Railroads.

Part I of the Interstate Commerce Act, referred to in subsec. (h), is classified to chapter 1 of Title 49, Transportation.

1954 Amendment. Subsec. (e) amended by Act Aug. 31, 1954, to exclude from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

1946 Amendment. Subsec. (b) amended by Act July 31, 1946, § 3(e), which changed the definition of employment relation to a carrier.

Subsec. (d) amended by Act July 31, 1946, § 1, which changed opening par. to include professional or technical services when integrated into staff of employer or other personal services the rendition of which is integrated into the employer's operations and added clause at end of first proviso excluding compensation of less than 10% of remuneration.

Subsec. (e) amended by Act July 31, 1946, § 3(f) which added second par., relating to presumption that a payment is compensation and payment for time lost and with respect to personal injury.

1942 Amendment. Subsec. (d) amended by Act April 8, 1942, which affected the first proviso thereof.

1940 Amendment. Subsec. (a), last sentence, added by Act Aug. 13, 1940, § 1.

Subsec. (b) amended by Acts Aug. 13, 1940, § 3, and June 11, 1940. Act Aug. 13, 1940 added last paragraph. Act June 11, 1940 amended the second proviso.

Subsec. (d) amended by Act June 11, 1940, which added second proviso.

Subsec. (e), last sentence, added by Act Oct. 10, 1940.

Effective Date of 1954 Amendment. Amendment of subsec. (e) by Act Aug. 31, 1954, as effective with respect to compensation paid on and after April 1, 1954, see section 402 of said Act, set out as a note under section 228a of Title 45, Railroads.

Effective Date of 1946 Amendment. Section 402 of Act July 31, 1946, provided in part that amendments to subsecs. (b), (d), and (e) of this section by sections 1 and 3(e), (f) of that Act shall be effective only with respect to services rendered after December 31, 1946.

Effective Date of 1942 Amendment. Act April 8, 1942, besides amending subsec. (d) of this section, contained the following paragraph: "The amendment in this section shall operate in the same manner and have the same effect as if it had been part of the Internal Revenue Code when that code was enacted on February 10, 1939, and as if it had been part of the Carriers Taxing Act of 1937 (50 Stat. 435 [section 261 et seq. of Title 45]) when that Act was enacted on June 29, 1937: Provided, however, That no interest or penalties shall accrue or be deemed to have accrued for the failure

to make returns under, or pay taxes levied by, sections 1500 and 1520, respectively, of said Internal Revenue Code and sections 2 and 3, respectively, of said Carriers Taxing Act of 1937 [sections 262, 263 of Title 45] with respect to the compensation of employees of any local lodge or division or of any general committee of a railway-labor-organization employer earned prior to the enactment of this amendment, if (1) the headquarters of such a local lodge or division was not located in the United States, or (2) all, or substantially all, the individuals constituting the membership of such a local lodge or division were employees of an employer not conducting the principal part of its business in the United States, or (3) the individuals represented by such a general committee were employees of an employer not conducting the principal part of its business in the United States, or (4) the service to such a general committee was rendered outside the United States, or (5) the office or headquarters of the individual rendering service to such a general committee was not located in the United States and if such returns are made and such taxes are paid within the time allowed for making returns and paying taxes with respect to the first calendar quarter beginning after the enactment of this amendment."

Effective Date of 1940 Amendment. Section 1 of Act Oct. 10, 1940, which Act affected section 1532 of I.R.C.1939, sections 228a, 228i, 262 note, 351, 352, 353, 354, 355, 356, 361, and 362 of Title 45, provided:

"That the provisions of this Act shall take effect on November 1, 1940, except that sections 2, 11, 25, 26, and 27 [affecting sections 228a (h) 228i, 262 note, 351 (g), and 352(d) of Title 45, and section 1532(e) of I.R.C.1939] shall be effective as of July 1, 1940, and sections 19 and 20 [affecting section 355(c) of Title 45] shall become effective upon the approval of this Act: *Provided, however, That—*

"(a) A half-month which has begun prior to November 1, 1940, in accordance with the Railroad Unemployment Insurance Act [section 351 et seq. of Title 45] and regulations thereunder, and which includes such date, shall continue, and benefits with respect thereto shall be computed and paid as if this Act had not been enacted;

"(b) All benefit years current on October 31, 1940, shall terminate (1) on October 31, 1940, or (2) on the last day of a half-month which includes October 31, 1940 and November 1, 1940, whichever is later, and, for the purposes of section 2 (c) of the Railroad Unemployment Insurance Act [section 352(c) of Title 45], as amended by this Act, all benefits paid for unemployment in half-months begun subsequent to June 30, 1940, and prior to November 1, 1940, shall be deemed to have been paid for unemployment within the benefit year ending June 30, 1941;

"(c) Benefits for unemployment in the first registration period, beginning after

October 31, 1940, of an employee who has, subsequent to June 30, 1940, completed a waiting period under section 3(b) of the Railroad Unemployment Insurance Act, [section 353(b) of Title 45], shall be determined and computed as though such registration period were a subsequent registration period in the same benefit year."

Act June 11, 1940, provided in part as follows: "The amendments in this section [affecting subsecs. (b) and (d) of this section] shall operate in the same manner and have the same effect as if they had been part of the Internal Revenue Code when that code was enacted on February 10, 1939, and as if they had

been part correspondingly of subsections (b) and (d) of the Carriers Taxing Act of 1937 (50 Stat. 435) [section 261 et seq. of Title 45] when that Act was enacted on June 29, 1937."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 3649. See, also, Act July 31, 1946, 1946 U.S. Code Cong.Service, p. 1318.

§ 1534.¹ Court jurisdiction

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Commissioner to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this subchapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this subchapter. 53 Stat. 183, amended June 25, 1948, c. 646, § 1, 62 Stat. 875, 895.

¹ So in original. There is no section 1533.

Historical Note

Codification. The words "and the District Court of the United States for the District of Columbia, respectively," following "The several district courts of the United States" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be

in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of said Title 28 which states that "The District of Columbia constitutes one judicial district".

§ 1535. Rules and regulations

The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this subchapter. 53 Stat. 183.

§ 1536. Other laws applicable

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, insofar as applicable and not inconsistent with the provisions of this subchapter, shall be applicable with respect to the taxes imposed by this subchapter. 53 Stat. 183, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45, eff. Feb. 11, 1939.

Historical Note

1941 Amendment. Act Mar. 17, 1941, substituted "3661" for "3762".

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

§ 1537. Effective date of subchapter

This subchapter shall take effect on the first day of that quarter of the calendar year occurring next after the enactment of this title. 53 Stat. 183.

§ 1538. Title of subchapter

This subchapter may be cited as the "Railroad Retirement Tax Act." Added July 31, 1946, c. 709, § 3(g), 60 Stat. 725.

Historical Note

Effective Date. Section as effective July 31, 1946, see note under section 228a of Title 45, Railroads.

Congressional Comments: For legislative history and purpose of Act July 31, 1946, see 1946 U.S.Code Cong.Service, p. 1316.

SUBCHAPTER C.—TAX ON EMPLOYERS OF EIGHT OR MORE

§ 1600. Rate of tax

Every employer (as defined in section 1607(a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607(b)) paid by him during the calendar year with respect to employment (as defined in section 1607(c)) after December 31, 1938. 53 Stat. 183, amended Aug. 10, 1939, c. 666, Title VI, § 608, 53 Stat. 1387.

Historical Note

1939 Amendment. Act Aug. 10, 1939, amended section to provide for payment of tax on wages paid by him during the calendar year instead of wages payable by him regardless of time of payment.

Successor Corporation Relieved From Taxes. Relief from taxes granted to successor corporation in certain instances, see note set out under section 1410 of I. R.C.1939.

Penalties or Forfeitures. Section 902 (1) of Act Aug. 10, 1939, provided: "No part of the tax imposed by the Federal Unemployment Tax Act [section 1600 et seq. of I.R.C.1939 or by title IX of the Social Security Act [former section 1101 et seq. of Title 42], whether or not the taxpayer is entitled to a credit against such tax, shall be deemed to be a penalty or forfeiture within the meaning of section 57j of the Act entitled 'An Act

to establish a uniform system of bankruptcy throughout the United States' [Title 11] approved July 1, 1898, as amended."

Taxes on Services Rendered by Employees of International Organizations Prior to Jan. 1, 1946. Section 5(b) of Act Dec. 29, 1945, c. 652, Title I, 59 Stat. 671, provided that taxes should not be collected on services rendered by employees of International Organizations prior to Jan. 1, 1946, under former sections 1001-1011 or former 1101-1110 of Title 42, or under sections 1400 et seq. and 1600 et seq. of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 1601. Credits against tax—(a) Contributions to State unemployment funds

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 1600 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 1603.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

(5) Repealed. Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, § 601(b), 58 Stat. 76.

(b) **Additional credit.** In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 per centum, whichever rate is lower.

(c) **Limit on total credits**

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 per centum of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under subchapter XII of chapter 7 of Title 42, and if any balance of such advance or advances has not been returned to the Federal unemployment account as provided in that subchapter before December 1 of the taxable year, then the total credits (after other reductions under this section) otherwise allowable under this section for such taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) in the case of a taxable year beginning with the fourth consecutive January 1 on which such a balance of unreturned advances existed, by 5 per centum of the tax imposed by section 1600 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) in the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of unreturned advances existed, by an additional 5 per centum, for each such succeeding taxable year, of the tax imposed by section 1600 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

For the purposes of this paragraph, wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law

of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(d) **Refund or credit.** Refund or credit of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund. 53 Stat. 183, amended Aug. 10, 1939, c. 666, Title VI, § 609, 53 Stat. 1387; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title VI, § 601, 58 Stat. 76; Aug. 5, 1954, c. 657, § 4, 68 Stat. 672.

Historical Note

1954 Amendment. Subsec. (c) amended by Act Aug. 5, 1954, to provide, under certain circumstances, for a reduction of the amount of credits computed and allowed under subssecs. (a) and (b) of this section.

1944 Amendment. Subsec. (a) (3) amended by Act Feb. 25, 1944, which omitted "but before July 1, next following such last day" preceding "but such credit", and omitted the second sentence beginning "The preceding provisions".

Subsec. (d) added by Act Feb. 25, 1944.

1939 Amendment. Act Aug. 10, 1939, amended section generally.

Credit for 1940, 1941, and 1942. Section 902(e) of Act Aug. 10, 1939, provided: "Notwithstanding the provisions of section 1601(a) (2) of the Internal Revenue Code, as amended, credit shall be permitted under such section 1601, against the tax for the taxable year in which remuneration is paid for services rendered during a prior year, for the amounts of contributions with respect to such remuneration which have not been credited against the tax for any prior taxable year. Credit shall be permitted under this subsection only against the tax for the years 1940, 1941, and 1942, and only for contributions with respect to remuneration for services rendered after December 31, 1938."

Credit Against Federal Unemployment Taxes. Act Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title VII, § 701, 54 Stat. 1017 (See 26 U.S.C.A. Internal Revenue Acts), contained provisions on this subject. However, it was affected by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title VII, § 701(c), 55 Stat. 726 (See 26 U.S.C.A. Internal Revenue Acts), and Act Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title VI, § 602, 58 Stat. 77, set out in note below.

Act Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title VI, § 602, 58 Stat. 77, provided:

"(a) **Allowance of credit against tax for 1936, 1937, and 1938.** Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

"(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;

"(2) Without regard to the date of payment, with respect to wages paid after September 18, 1939;

"(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941 to November 18, 1941, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

"The provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year. The terms used in this subsection shall have the same meaning as when used in title IX of such Act prior to February 11, 1939. The total credit allowable against the tax imposed by section 901 of such Act for the calendar year 1936, 1937, or 1938 shall not exceed 90 per centum of such tax.

"(b) **Allowance of credit against tax for 1939, 1940, 1941, and 1942 where assets in control of court.** Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, or (in the case of credit against the tax for the

calendar year 1939) the period October 9, 1940, to December 8, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, or (in the case of credit against the tax for the calendar year 1940) the period September 21, 1941, to November 18, 1941, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of a court of competent jurisdiction. The provisions of the Federal Unemployment Tax Act (except section 1601(a) (3)), including such provisions as modified by section 902(e) of the Social Security Act Amendments of 1939, shall apply to allowance of credit under this subsection. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by such Act for the calendar year 1939, 1940, 1941, or 1942 shall not exceed 90 per centum of such tax.

"(c) Refund, Credit, or Abatement.

"(1) Refund or credit of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund.

"(2) Any claim for refund or credit, with respect to the tax (including penalty and interest collected with respect thereto, if any) imposed by section 901 of the Social Security Act or section 1600 of the Federal Unemployment Tax Act,

based on credit for contributions, which has been disallowed prior to the date of enactment of this Act, the allowance of which would be considered erroneous under section 3774(b) or section 3775(b) of the Internal Revenue Code, shall nevertheless be allowable if otherwise allowable under this section or section 1601 of the Federal Unemployment Tax Act.

"(3) Notwithstanding the acceptance of an offer in compromise prior to the date of enactment of this Act with respect to any tax (or penalty or interest in connection therewith) imposed by section 901 of the Social Security Act or section 1600 of the Federal Unemployment Tax Act, any claim for refund, credit, or abatement with respect to the tax (including penalty and interest collected with respect thereto, if any) imposed by either of such Acts, based on credit for contributions, shall be allowable if otherwise allowable under this section or section 1601 of the Federal Unemployment Tax Act.

"(4) On and after the date of the enactment of this Act no refund, credit, or abatement shall be allowed based on any credit allowable under section 701 of the Revenue Act of 1941."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 5, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2909.

§ 1602. Conditions of additional credit allowance

(a) **State standards.** A taxpayer shall be allowed an additional credit under section 1601(b) with respect to any reduced rate of contributions permitted by a State law, only if the Federal Security Administrator finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account, is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless (A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and (B) the balance of such account amounts to not less than $2\frac{1}{2}$ per centum of that part of the pay roll or pay rolls for the three years preceding the computation date by which contributions to such account were measured; and (C) such contributions were payable to such account with respect to three years preceding the computation date;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than $7\frac{1}{2}$ per centum

of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(4) Effective January 1, 1942, paragraph (3) of this subsection is amended to read as follows:

“(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless (A) compensation has been payable from such account throughout the year preceding the computation date, and (B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three years preceding such date, and (C) the balance of such account amounts to not less than 2½ per centum of that part of the pay roll or pay rolls for the three years preceding such date by which contributions to such account were measured, and (D) such contributions were payable to such account with respect to the three years preceding the computation date.”

(b) [Certification by the Secretary of Labor with respect to additional credit allowance.]¹ (1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 1603) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a) of this section.

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 1603) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a) of this section, the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a) of this section, and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c) of this section, established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a) of this section.

(3) The Secretary of Labor shall, within thirty days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c) of this section, which are allowable under such State law only in accordance with the provisions of subsection (a) of this section. After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) of this subsection unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) of this section or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) Definitions. As used in this section—

(1) **Reserve account.** The term “reserve account” means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) **Pooled fund.** The term “pooled fund” means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) **Partially pooled account.** The term “partially pooled account” means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4) of this subsection.

(4) **Guaranteed employment account.** The term “guaranteed employment account” means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least thirty hours of work, for which remuneration will be paid at not less than stated rates, for each of forty weeks (or if more, one weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the eleven or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) **Year.** The term “year” means any twelve consecutive calendar months.

(6) **Balance.** The term “balance”, with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) **Computation date.** The term "computation date" means the date, occurring against once in each calendar year and within twenty-seven weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) **Reduced rate.** The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) **Voluntary contributions.** A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of one hundred and twenty days after the beginning of the year for which such rates are effective, or prior to January 1, 1948, whichever date is the later. 53 Stat. 184, amended Aug. 10, 1939, c. 666, Title VI, § 610, 53 Stat. 1388; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; July 24, 1947, c. 309, § 1, 61 Stat. 416; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065.

1 Catchline has been changed to conform to transfer of functions from Federal Security Administrator to Secretary of Labor.

Historical Note

1947 Amendment. Subsec. (d) added by Act July 24, 1947.

1939 Amendment. Act Aug. 10, 1939, amended section generally.

Effective Date of 1947 Amendment. Section 2 of Act July 24, 1947, provided: "The amendment made by section 1 [adding subsec. (d) to this section] shall be applicable only with respect to taxable years beginning after December 31, 1945."

Transfer of Functions. Functions of the Federal Security Administrator with respect to unemployment compensation and his functions under sections 1600-1611 of I.R.C.1939 were transferred to the Secretary of Labor by 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065. See note set out under section 1332-15 of Title 5, Executive Departments and Government Officers and Employees.

Said section 1 of 1949 Reorg. Plan. No. 2 also provided that the functions transferred by this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

"Federal Security Administrator" was substituted for "Board" by 1946 Reorg. Plan No. 2, cited to text. See note under section 902 of Title 42, The Public Health and Welfare.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act July 24, 1947, see 1947 U.S. Code Cong. Service, p. 1350.

§ 1603. Approval of State laws

(a) **Requirements.** The Secretary of Labor shall approve any State law submitted to him, within thirty days of such submission, which he finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 1104 of Title 42;

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclu-

sive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b): *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c) (2) of Title 42 may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) Notification. The Secretary of Labor shall, upon approving such law, notify the Governor of the State of his approval.

(c) Certification. On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the ninetieth day after the Governor of the State has been notified thereof unless the State has before such ninetieth day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

(d) Notice of non-certification. If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State whose law he has previously approved, may not be certified under subsection (c), he shall promptly so notify the Governor of such State. 53 Stat. 185, amended Aug. 10, 1939, c. 666, Title VI, § 611, 53 Stat. 1391; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 416(a), 60 Stat. 991; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, c. 809, Title IV, § 405(a), 64 Stat. 560; Aug. 5, 1954, c. 657, § 5 (a) (2), 68 Stat. 673.

Historical Note

1954 Amendment. Subsec. (a) (4) amended by Act Aug. 5, 1954, to serve the dual purpose of permitting the use of credited funds for administrative purposes and to impose a sanction for violations of such use.

1950 Amendment. Subsec. (c) amended by Act Aug. 28, 1950, which substituted "amended its law" for "changed its law", and added at end thereof the words "and such finding * * * of the State".

1946 Amendment. Subsec. (a) (4) amended by Act Aug. 10, 1946, which added the proviso allowing payment of disability benefits.

1939 Amendment. Subsec. (a) (1), 3, 4 amended by Act Aug. 10, 1939, as follows: In par. (1) omitted "in the State" following "offices"; in par. (3) inserted words in parenthesis preceding "immediately" and substituted "section 1104 of Title 42" for "section 904 of the Social Security Act, 40 Stat. 640 (U.S.C., Title 42, § 1104)"; and in par. (4) substituted "unemployment fund of the State" for "Unemployment Trust Fund by the State Agency," and added provisions for refunds.

Transfer of Functions. Functions of Federal Security Administrator with respect to unemployment compensation and his functions under sections 1600-1611 of I.R.C.1939 were transferred to the Secre-

tary of Labor by 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1035. See note set out under section 1602 of I.R.C.1939

"Federal Security Administrator" was substituted for "Social Security Board" by 1946 Reorg. Plan, No. 2. See note under section 902 of Title 42, The Public Health and Welfare.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 5, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2909. See, also, Acts Aug. 23, 1950, 1950 U.S. Code Cong. Service, p. 3237; Aug. 10, 1946, 1946 U.S. Code Cong. Service, p. 1510.

§ 1604. Returns

(a) Requirement. Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this subchapter for such taxable year. Each such return shall be made under oath, shall be filed with the collector for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) Extension of time for filing. The Commissioner may extend the time for filing the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(c) Publicity. Returns filed under this subchapter shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (a), (b) and (f) of section 55 shall not apply. 53 Stat. 186, amended Aug. 10, 1939, c. 666, Title VI, § 612, 53 Stat. 1391.

Historical Note

1939 Amendment. Subsec. (b) amended by Act Aug. 10, 1939, which authorized extension of time for ninety instead of sixty days.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1605. Payment of taxes

(a) Administration. The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal-revenue collections.

(b) Addition to tax in case of delinquency. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(c) Installment payments. The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the

last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(d) **Extension of time for payment.** At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(e) **Fractional parts of a cent.** In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. 53 Stat. 186.

§ 1606. Interstate commerce and Federal instrumentalities

(a) No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) The legislature of any State may require any instrumentality of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 1603 and (except as provided in section 5240 of the Revised Statutes, as amended, and as modified by subsection (c) of this section) to comply otherwise with such law. The permission granted in this subsection shall apply (1) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (2) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Secretary of Labor under section 1603 with respect to such year.

(c) Nothing contained in section 5240 of the Revised Statutes, as amended, shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination

of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, and before January 1, 1955, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection.

(f) The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor (or approved by the Social Security Board prior to July 16, 1946) under section 1603 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (2) thereof) of subsection (b) of this section with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) The permission granted by subsection (f) of this section shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels (1) owned by or bareboat chartered to the United States, and (2) whose business

is conducted by such general agents. As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States not wholly owned by it and shall not be exempt from the tax imposed by section 1600. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f) of this section, except that clause (2) of the second sentence of subsection (b) of this section shall apply.

(h) Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g) of this section, (1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and (2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) of this section shall, for the purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account. 53 Stat. 187, amended Aug. 10, 1939, c. 666, Title VI, § 613, 53 Stat. 1391; Oct. 23, 1945, c. 433, § 7(c), 59 Stat. 549; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title III, § 301(a), 60 Stat. 981; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 5, 1953, c. 329, § 1, 67 Stat. 386; Sept. 1, 1954, c. 1212, § 4(b), 68 Stat. 1135.

Historical Note

References in Text. Section 5240 of the Revised Statutes, as amended, referred to in subsecs. (b) and (c), is classified to sections 481-485 of Title 12, Banks and Banking.

1954 Amendment. Subsec. (e) amended by Act Sept. 1, 1954, to insert "and before January 1, 1955" following "December 31, 1945".

1953 Amendment. Subsecs. (g), (h) and (i) added by Act Aug. 5, 1953.

1946 Amendment. Subsec. (f) added by Act Aug. 10, 1946.

1945 Amendment. Subsec. (e) added by Act Oct. 23, 1945.

1939 Amendment. Subsecs. (b), (c), (d) added and original section made subsec. (a) by Act Aug. 10, 1939.

Effective Date of 1953 Amendment. Section 4 of Act Aug. 5, 1953 provided that the amendments of sections 1606 and 1607 made by such Act should take effect as of July 1, 1953.

Saving Clause; Effect of Subsec. (f) on State laws. Section 301(b) of Act Aug. 10, 1946, provided that the amendment effected by the addition of subsec. (f) to this section shall not operate, prior to January 1, 1948, to invalidate any provision, in effect on August 10, 1946, in

any State unemployment compensation law.

Transfer of Functions. Functions of Federal Security Administrator with respect to unemployment compensation and his functions under sections 1600-1611 of I.R.C.1939 were transferred to the Secretary of Labor by 1940 Reorg. Plan No. 2. See note set out under section 1602 of I.R.C.1939.

"Federal Security Administrator" was substituted for "Board" by 1946 Reorg. Plan No. 2. See note under section 902 of Title 42, The Public Health and Welfare.

Exception as to Transfer of Functions. Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note preceding section 1 of I.R.C.1939.

Limitation on 1953 Amendment. Section 3 of Act Aug. 5, 1953, provided: "Nothing in the amendments made by this Act [to sections 1606 and 1607 of I.R.C.1939] shall be construed as constituting officers and members of the

crew of American vessels (1) owned by or bareboat chartered to the United States and (2) whose business is conducted by general agents of the Secretary of Commerce employees of such general agents except for the purposes of State unemployment compensation and temporary disability insurance laws and the Federal Unemployment Tax Act [this subchapter]."

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 1, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2891. See, also, Acts Aug. 5, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2081; Aug. 10, 1946, 1946 U.S. Code Cong. Service, p. 1510; Oct. 3, 1945, 1945 U.S. Code Cong. Service, p. 874.

§ 1607. Definitions

When used in this subchapter—

(a) **Employer.** The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) **Wages.** The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident dis-

ability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6);

(6) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400, or (B) of any payment required from an employee under a State unemployment compensation law;

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made.

(c) **Employment.** The term "employment" means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed; and any service, of whatever nature, performed after June 30, 1946, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

(1) Agricultural labor (as defined in subsection (l));

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the fore-

going which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 351 of Title 45;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service is less than \$50, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101(1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumen-

tality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) Service performed in the employ of an international organization.

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

(d) **Included and excluded service.** If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (c).

(e) **State agency.** The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) **Unemployment fund.** The term "unemployment fund" means a special fund, established under a State law and administered by a State

agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 1104 of Title 42, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b): *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c) (2) of Title 42 may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) **Contributions.** The term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) **Compensation.** The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) **Employee.** The term "employee" includes an officer of a corporation, but such term does not include (1) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual (except an officer of a corporation) who is not an employee under such common-law rules.

(j) **State.** The term "State" includes Alaska, Hawaii, and the District of Columbia.

(k) **Person.** The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(l) **Agricultural labor.** The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 1141j(g) of Title 12, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(m) Certain employees of Bonneville Power Administrator. The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, and before January 1, 1955, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.

(n) American vessel. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(o) [Services performed by certain seamen].¹ Notwithstanding the provisions of subsection (c) (6) of this section, service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) of this section shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel (1) owned by or bareboat chartered to the United States and (2) whose business is conducted by a general agent of the Secretary of Commerce. For the purposes of this subchapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) of this section shall be subject to all the requirements imposed upon an employer under this subchapter with respect to service which constitutes employment by reason of this subsection. 53 Stat. 187, amended Aug. 10, 1939, c. 666, Title VI, § 614, 53 Stat. 1392; Oct. 23, 1945, c. 433, § 7(d), 59 Stat. 549; Dec. 29, 1945, c. 652, Title I, § 4(d), 59 Stat. 670; Aug. 10, 1946, c. 951, Title III, §§ 302-305, Title IV, §§ 412(b), 416(b), 60 Stat. 981, 982, 989, 991;

Apr. 20, 1948, c. 222, § 2(a), 62 Stat. 195; June 14, 1948, c. 468, § 1(a), 62 Stat. 438; Aug. 28, 1950, c. 809, Title II, § 209(a) (1), (3), (b) (1-3), 64 Stat. 545, 546; Aug. 5, 1953, c. 329, § 2, 67 Stat. 386; Aug. 5, 1954, c. 657, § 5(a) (3), 68 Stat. 673; Sept. 1, 1954, c. 1212, § 4(b), 68 Stat. 1135.

1 Catchline supplied by editor.

Historical Note

1954 Amendments. Subsec. (f) amended by Act Aug. 5, 1954, to serve the dual purpose of permitting the use of credited funds for administrative purposes and to impose sanctions for violations of such use.

Subsec. (m) amended by Act Sept. 1, 1954, to insert "and before January 1, 1955" following "December 31, 1945."

1953 Amendment. Subsec. (o) added by Act Aug. 5, 1953.

1950 Amendment. Subsec. (b) amended by Act Aug. 28, 1950, § 209(a) (1), to redefine wages.

Subsec. (c) (3) amended by Act Aug. 28, 1950, § 209(b) (1), to redefine service.

Subsec. (c) (10) (A) (i) amended by Act Aug. 28, 1950, § 209(b) (2), which substituted "is less than \$50" for "does not exceed \$45".

Subsec. (c) (10) (E) amended by Act Aug. 28, 1950, § 209(b) (3), which struck out "in any calendar quarter" following "Service performed" and struck out, "and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition)" following "or university".

1948 Amendment. Subsec. (c) (15) amended by Act Apr. 20, 1948, which added subpar. (B).

Subsec. (i) amended by Act June 14, 1948, to provide for the application of the usual common-law rules in determining whether a person is an employee.

1946 Amendments. Subsec. (b) (1) amended by Act Aug. 10, 1946, § 412(b) so that beginning Jan 1, 1947, the amount paid during a calendar year, instead of the amount paid with respect to employment during that year will be the basis for exclusion from wages under that par.

Subsec. (c) amended by Act Aug. 10, 1946, §§ 302-304, which extended definition of employment in opening par. to include service on or in connection with an American vessel under certain conditions outside the United States, restricted the exception from employment in par. (4) to service on a foreign vessel if the employee is employed on or in connection with such vessel when outside the United States, and added par. (17).

Subsec. (f) amended by Act Aug. 10, 1946, § 416(b), which added the proviso allowing payment of disability benefits.

Subsec. (n) added by Act Aug. 10, 1946, § 305.

1945 Amendments. Subsec. (c) amended by Act Dec. 29, 1945, which struck out

"or" following semicolon in subdiv. (14) struck out period and inserted "; or" in subdiv. (15), and added subdiv. (16).

Subsec. (m) added by Act Oct. 23, 1945.

1939 Amendment. Subsec. (i) added by Act Aug. 10, 1939, which also amended section generally.

Effective Date of 1953 Amendment. Amendment of this section by Act Aug. 5, 1953 as effective July 1, 1953, see note under section 1606 of I.R.C.1939.

Amendment of Subsec. (b) Effective Jan. 1, 1952. Section 209(a) (3) of Act Aug. 28, 1950, provided that effective with respect to remuneration paid after Dec. 31, 1951, subsec. (b) is amended by putting a period at the end of par. (8) in lieu of the colon and by striking out par. (9).

Effective Date of 1950 Amendment of Subsec. (b). Section 209(a) (2), of Act Aug. 28, 1950, provided that: "The amendment made by paragraph (1) shall be applicable only with respect to remuneration paid after 1950. In the case of remuneration paid prior to 1951, the determination under section 1607(b) (1) of the Internal Revenue Code [this section] (prior to its amendment by this Act) of whether or not such remuneration constituted wages shall be made as if paragraph (1) of this subsection had not been enacted and without inferences drawn from the fact that the amendment made by paragraph (1) is not made applicable to periods prior to 1951."

Effective Date of 1950 Amendment of Subsec. (c). Section 209(b) (4) of Act Aug. 28, 1950 provided that the amendment of subsec. (c) should be applicable only with respect to service performed after 1950.

Effective Date of 1948 Amendments. Section 1(b) of Act June 14, 1948, provided that: "The amendments made by subsection (a) [of section 1 of Act June 14, 1948,] shall have the same effect as if included in the Internal Revenue Code on February 10, 1939, the date of its enactment."

Section 2(b) of Act Apr. 20, 1948, provided that: "The amendment made by subsection (a) shall be applicable with respect to services performed after December 31, 1939, and, as to services performed before July 1, 1946, shall be applied as if such amendment had been a part of section 1607(c) (15) of the Internal Revenue Code as added to such code by section 614 of the Social Security Act Amendments of 1939 [this section]."

Effective Date of 1946 Amendment. Amendments to subsec. (c) and addition of subsec. (n) by Act Aug. 10, 1946, were made effective July 1, 1946, by sections 302, 303, 304(d) and 305 of that Act.

Effective Date of 1945 Amendment. Amendment of subsec. (c) by Act Dec. 29, 1945, was made effective as of Jan. 1, 1946, by section 4(d) thereof.

Effective Date of 1939 Amendment. Amendment by Act Aug. 10, 1939, made effective Jan. 1, 1940, by section 614 of that Act.

Exemption of Certain Services from Taxation. Section 902(f) of Act Aug. 10, 1939, provided: "No tax shall be collected under title VIII [former section 1001 et seq. of Title 42] or IX [former section 1101 et seq. of Title 42] of the Social Security Act or under the Federal Insurance Contributions Act [section 1400 et seq. of I.R.C.1939] or the Federal Unemployment Tax Act [section 1600 et seq. of I.R.C.1939], with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections 1426(b) and 1607(c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any), shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be

made under title II of the Social Security Act [section 401 et seq. of Title 42] with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of section 209(b) of such Act, as amended."

Refunds or Credits for Overpayments. Section 3 of Act Apr. 20, 1948, provided that: "If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [to this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 1, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2891. See, also, Acts Aug. 5, 1954, 1954 U.S. Code Cong. and Adm. News, p. 2909; Aug. 5, 1953, 1953 U.S. Code Cong. and Adm. News, p. 2081; June 14, 1948, 1948 U.S. Code Cong. Service, p. 1752; Apr. 20, 1948, 1948 U.S. Code Cong. Service, p. 1473; Aug. 10, 1946, 1946 U.S. Code Cong. Service, p. 1510; Dec. 29, 1945, 1945 U.S. Code Cong. Service, p. 946; Oct. 3, 1945, 1945 U.S. Code Cong. Service, p. 874.

§ 1608. Deductions as constructive payments

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. 53 Stat. 188.

§ 1609. Rules and regulations

The Secretary and the Secretary of Labor, respectively, shall make and publish such rules and regulations, not inconsistent with this subchapter, as may be necessary to the efficient administration of the functions with which each is charged under this subchapter. The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter, except sections 1602 and 1603. 53 Stat. 188, amended 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065.

Historical Note

Transfer of Functions. Functions of Federal Security Administrator with respect to unemployment compensation and his functions under sections 1600-1611 of I.R.C.1939 were transferred to the Secretary of Labor, by 1949 Reorg. Plan No. 2. See note set out under section 1602 of I.R.C.1939.

by 1946 Reorg. Plan No. 2. See note under section 902 of Title 42, The Public Health and Welfare.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

"Federal Security Administrator" was substituted for "Social Security Board"

§ 1610

EMPLOYMENT TAXES

§ 1610. Other laws applicable

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter. 53 Stat. 188.

§ 1611. Short title

This subchapter may be cited as the "Federal Unemployment Tax Act". Added Aug. 10, 1939, c. 666, Title VI, § 615, 53 Stat. 1396.

SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Historical Note

This Subchapter was added by Act June 9, 1943, 7 p.m., E.W.T., c. 120, § 2(a), 57 Stat. 126.

Effective Date of Subchapter D and E. Section 2(d) of Act June 9, 1943, 7 p.m., E.W.T., c. 120, 57 Stat. 126, provided as follows: "The amendments made by subsections (a) and (b) [affecting sections

1621-1632 and sections 34, 322(f) and 476] shall take effect July 1, 1943, and shall be applicable to all wages paid on or after such date, except that such amendments shall not be applicable to wages paid during the calendar year 1943 with respect to a payroll period beginning before such date."

§ 1621. Definitions

As used in this subchapter

(a) **Wages.** The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the armed forces of the United States performed prior to January 1, 1955, in a month for which such member is entitled to the benefits of section 22(b) (13), or

(2) for agricultural labor (as defined in section 1426(h)), or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter, or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization or for the government of the Commonwealth of the Philippines, or

(6) for services performed by a nonresident alien individual, other than (A) a resident of a contiguous country who enters and leaves the United States at frequent intervals, or (B) a resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or

(7) for such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Commissioner with the approval of the Secretary, or

(8) (A) for services for an employer (other than the United States or any agency thereof) (i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 116(a), or (ii) performed in a foreign country by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country to withhold income tax upon such remuneration, or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 per centum of the remuneration to be paid to the employee by such employer during the calendar year will be for such services, or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico, or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, or

(10) (A) for services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back, or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash, or

(12) to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6).

(b) **Payroll period.** The term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(c) **Employee.** The term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) **Employer.** The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for the purposes of subsection (a)) means the person having control of the payment of such wages; and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for the purposes of subsection (a)) means such person.

(e) **Number of withholding exemptions claimed.** The term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 1622(h), except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126, amended May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. II, § 22(a), 58 Stat. 247; Dec. 29, 1945, c. 652, Title I, § 4(e), 59 Stat. 671; Aug. 8, 1947, c. 515, § 10(a), 61 Stat. 918; Aug. 28, 1950, c. 809, Title II, § 209(c) (1), (2), 64 Stat. 547; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, §§ 202(b), 221(f), 64 Stat. 927, 945; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 305(c), 321(b), 65 Stat. 484, 498; Aug. 7, 1953, c. 346, § 2, 67 Stat. 471; Aug. 15, 1953, c. 512, Title II, § 204(b), 67 Stat. 618.

Historical Note

1953 Amendment. Subsec. (a) (1) amended by Act Aug. 7, 1953, to extend its provisions for one year, from Jan. 1, 1954 to Jan. 1, 1955.

Subsec. (a) (8) (A) amended by Act Aug. 15, 1953 to eliminate the withholding requirement with regard to remuneration for services which may be excluded from gross income under section 116(a) (1) or (2) of I.R.C.1939 in cases where the remuneration is for services performed outside the United States but not within a foreign country.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 305(c), to bring within scope of section wages received by armed forces personnel for active service in a combat zone prior to Jan. 1, 1954.

Subsec. (a) (8) (A) amended by Act Oct. 20, 1951, § 321(b), to provide that there will be no withholding of income where it is reasonable to believe that the person will qualify for exclusion on the basis of presence in a foreign country for 17 out of 18 consecutive months.

1950 Amendments. Subsec. (a) (1) inserted by Act Sept. 23, 1950, § 202(b).

Subsec. (a) (4) amended by Act Aug. 28, 1950, § 209(c) (1), to redefine services not in the course of the employer's trade or business.

Subsec. (a) (6) amended by Act Sept. 23, 1950, § 221(f) (1), to add clause (B).

Subsec. (a) (8) amended by Act Sept. 23, 1950, § 221(f) (2), to make subsection inapplicable to Puerto Rico.

Subsec. (a) (9) amended by Act Aug. 28, 1950, § 209(c) (2), to redefine services performed by a minister.

Subsec. (a) (10)-(12) added by Act Aug. 28, 1950, § 209(c) (2).

1947 Amendment. Subsec. (a) amended by Act Aug. 8, 1947, which struck out par. (1), limited application of par. (8) to remuneration for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of a foreign country, and to remuneration for services for an employer performed within a possession of the United States by a citizen, if it is reasonable to believe that at least 80% of the remuneration to be paid will be for such services, and deleted last sentence of par. (9).

1945 Amendment. Subsec. (a) (5) amended by Act Dec. 29, 1945, which inserted "or an international organization" following "foreign government".

1944 Amendment. Subsecs. (e)-(k) struck out by Act May 29, 1944, and a new subsec. (e) inserted in lieu thereof.

Effective Date of 1953 Amendment. Section 204(c) of Act Aug. 15, 1953 provided in part that the amendment to this section and section 116(a) (2) of I.R.C. 1939 by said Act shall not affect the liability of any employer to deduct and withhold the tax imposed by section 1622 in the case of any remuneration paid:

before the first day of the first month beginning more than ten days after Aug. 15, 1953, the date of enactment of said Act Aug. 15, 1953.

Effective Date of 1951 Amendment. Amendment of subsec. (a) (1) made applicable with respect to wages paid after the tenth day following Oct. 20, 1951, by section 305(d) of Act Oct. 20, 1951.

Amendment of subsec. (a) (8) (A) made applicable only with respect to wages paid on or after Jan. 1, 1952, by section 321(c) of Act Oct. 20, 1951.

Effective Date of 1950 Amendments. Section 209(c) (3) of Act Aug. 23, 1950, provided that the amendment of subsec. (a) should be applicable only with respect to remuneration paid after 1950.

Section 202(b) of Act Sept. 23, 1950, provided in part that the amendment of subsec. (a) (1) should be effective with respect to wages paid after Oct. 31, 1950.

Section 221(k) of Act Sept. 23, 1950, provided in part that the amendments of subsec. (a) (6), (8), should be applicable with respect to wages paid on or after Jan. 1, 1951.

Effective Date of 1947 Amendment. Section 10(b) of Act Aug. 8, 1947, provided: "The amendments made by this section [section 10(a) of Act Aug. 8, 1947], shall be applicable with respect to wages paid on or after January 1, 1948, except that the amendment striking out paragraph (1) of section 1621(a) of the Internal Revenue Code shall be applicable with respect to wages paid on or after January 1, 1949."

Effective Date of 1944 Amendment. Amendment of section by Act May 20, 1944, was made applicable only with respect to wages paid on or after Jan. 1, 1945, by section 21 thereof.

Effective Date. Section prior to May 20, 1944 amendment, as effective July 1, 1943, see note preceding this section.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S.Code Cong. and Adm. News, p. 2423. See, also, Acts Aug. 7, 1953, 1953 U.S. Code Cong. and Adm. News, p. 2186; Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781; Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053; Aug. 28, 1950, 1950 U.S.Code Cong.Service, p. 3287; Aug. 8, 1947, 1947 U.S.Code Cong.Service, p. 1663; Dec. 29, 1945, 1945 U.S.Code Cong. Service, p. 946; May 29, 1944, 1944 U.S. Code Cong.Service, p. 1056.

§ 1622. Income tax collected at source

(a) **Requirement of withholding.** Every employer making payment of wages shall deduct and withhold upon such wages a tax equal to 18 per centum of the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption as shown in subsection (b) (1), except that in the case of wages paid on or after November 1, 1951, and before January 1, 1954, the tax shall be equal to 20 per centum of such excess in lieu of 18 per centum.

(b) (1) The table referred to in subsection (a) is as follows:

Percentage method withholding table

Pay-roll period	Amount of one withholding exemption
Weekly	\$13.00
Biweekly	26.00
Semimonthly	28.00
Monthly	56.00
Quarterly	167.00
Semiannual	333.00
Annual	667.00
Daily or miscellaneous (per day of such period)	1.80

(2) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Commissioner, under regulations prescribed by him with the approval of the Secretary, may authorize an employer, in computing the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period.

(5) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding

(1) (A) Wages paid after October 31, 1951, and before January 1, 1954. At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee after October 31, 1951, and before January 1, 1954, a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a):

WEEKLY

If the payroll period with respect to an employee is weekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$0	\$13	20% of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$13	\$14	\$2.70	.10	0	0	0	0	0	0	0	0	0
\$14	\$15	2.90	.30	0	0	0	0	0	0	0	0	0
\$15	\$16	3.10	.50	0	0	0	0	0	0	0	0	0
\$16	\$17	3.30	.70	0	0	0	0	0	0	0	0	0
\$17	\$18	3.50	.90	0	0	0	0	0	0	0	0	0
\$18	\$19	3.70	1.10	0	0	0	0	0	0	0	0	0
\$19	\$20	3.90	1.30	0	0	0	0	0	0	0	0	0
\$20	\$21	4.10	1.50	0	0	0	0	0	0	0	0	0
\$21	\$22	4.30	1.70	0	0	0	0	0	0	0	0	0
\$22	\$23	4.50	1.90	0	0	0	0	0	0	0	0	0
\$23	\$24	4.70	2.10	0	0	0	0	0	0	0	0	0
\$24	\$25	4.90	2.30	0	0	0	0	0	0	0	0	0
\$25	\$26	5.10	2.50	0	0	0	0	0	0	0	0	0
\$26	\$27	5.30	2.70	.20	0	0	0	0	0	0	0	0
\$27	\$28	5.50	2.90	.40	0	0	0	0	0	0	0	0
\$28	\$29	5.70	3.10	.60	0	0	0	0	0	0	0	0
\$29	\$30	5.90	3.30	.80	0	0	0	0	0	0	0	0
\$30	\$31	6.10	3.50	1.00	0	0	0	0	0	0	0	0
\$31	\$32	6.30	3.70	1.20	0	0	0	0	0	0	0	0
\$32	\$33	6.50	3.90	1.40	0	0	0	0	0	0	0	0
\$33	\$34	6.70	4.10	1.60	0	0	0	0	0	0	0	0
\$34	\$35	6.90	4.30	1.80	0	0	0	0	0	0	0	0
\$35	\$36	7.10	4.50	2.00	0	0	0	0	0	0	0	0
\$36	\$37	7.30	4.70	2.20	0	0	0	0	0	0	0	0
\$37	\$38	7.50	4.90	2.40	0	0	0	0	0	0	0	0
\$38	\$39	7.70	5.10	2.60	0	0	0	0	0	0	0	0
\$39	\$40	7.90	5.30	2.80	.20	0	0	0	0	0	0	0
\$40	\$41	8.10	5.50	3.00	.40	0	0	0	0	0	0	0
\$41	\$42	8.30	5.70	3.20	.60	0	0	0	0	0	0	0
\$42	\$43	8.50	5.90	3.40	.80	0	0	0	0	0	0	0
\$43	\$44	8.70	6.10	3.60	1.00	0	0	0	0	0	0	0
\$44	\$45	8.90	6.30	3.80	1.20	0	0	0	0	0	0	0
\$45	\$46	9.10	6.50	4.00	1.40	0	0	0	0	0	0	0
\$46	\$47	9.30	6.70	4.20	1.60	0	0	0	0	0	0	0
\$47	\$48	9.50	6.90	4.40	1.80	0	0	0	0	0	0	0
\$48	\$49	9.70	7.10	4.60	2.00	0	0	0	0	0	0	0
\$49	\$50	9.90	7.30	4.80	2.20	0	0	0	0	0	0	0
\$50	\$51	10.10	7.50	5.00	2.40	0	0	0	0	0	0	0
\$51	\$52	10.30	7.70	5.20	2.60	0	0	0	0	0	0	0
\$52	\$53	10.50	7.90	5.40	2.80	.20	0	0	0	0	0	0
\$53	\$54	10.70	8.10	5.60	3.00	.40	0	0	0	0	0	0
\$54	\$55	10.90	8.30	5.80	3.20	.60	0	0	0	0	0	0
\$55	\$56	11.10	8.50	6.00	3.40	.80	0	0	0	0	0	0

WEEKLY — Continued

If the payroll period with respect to an employee is weekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$56	\$57	\$11.20	\$8.70	\$6.20	\$3.60	\$1.00	\$0	\$0	\$0	\$0	\$0	\$0
\$57	\$58	11.50	8.90	6.40	3.80	1.20	0	0	0	0	0	0
\$58	\$59	11.70	9.10	6.60	4.00	1.40	0	0	0	0	0	0
\$59	\$60	11.90	9.30	6.80	4.20	1.60	0	0	0	0	0	0
\$60	\$62	12.20	9.60	7.10	4.50	1.90	0	0	0	0	0	0
\$62	\$64	12.60	10.00	7.50	4.90	2.30	0	0	0	0	0	0
\$64	\$66	13.00	10.40	7.90	5.30	2.70	.20	0	0	0	0	0
\$66	\$68	13.40	10.80	8.30	5.70	3.10	.60	0	0	0	0	0
\$68	\$70	13.80	11.20	8.70	6.10	3.50	1.00	0	0	0	0	0
\$70	\$72	14.20	11.60	9.10	6.50	3.90	1.40	0	0	0	0	0
\$72	\$74	14.60	12.00	9.50	6.90	4.30	1.80	0	0	0	0	0
\$74	\$76	15.00	12.40	9.90	7.30	4.70	2.20	0	0	0	0	0
\$76	\$78	15.40	12.80	10.30	7.70	5.10	2.60	0	0	0	0	0
\$78	\$80	15.80	13.20	10.70	8.10	5.50	3.00	.40	0	0	0	0
\$80	\$82	16.20	13.60	11.10	8.50	5.90	3.40	.80	0	0	0	0
\$82	\$84	16.60	14.00	11.50	8.90	6.30	3.80	1.20	0	0	0	0
\$84	\$86	17.00	14.40	11.90	9.30	6.70	4.20	1.60	0	0	0	0
\$86	\$88	17.40	14.80	12.30	9.70	7.10	4.60	2.00	0	0	0	0
\$88	\$90	17.80	15.20	12.70	10.10	7.50	5.00	2.40	0	0	0	0
\$90	\$92	18.20	15.60	13.10	10.50	7.90	5.40	2.80	.30	0	0	0
\$92	\$94	18.60	16.00	13.50	10.90	8.30	5.80	3.20	.70	0	0	0
\$94	\$96	19.00	16.40	13.90	11.30	8.70	6.20	3.60	1.10	0	0	0
\$96	\$98	19.40	16.80	14.30	11.70	9.10	6.60	4.00	1.50	0	0	0
\$98	\$100	19.80	17.20	14.70	12.10	9.50	7.00	4.40	1.90	0	0	0
\$100	\$105	20.50	17.90	15.40	12.80	10.20	7.70	5.10	2.60	0	0	0
\$105	\$110	21.50	18.90	16.40	13.80	11.20	8.70	6.10	3.60	1.00	0	0
\$110	\$115	22.50	19.90	17.40	14.80	12.20	9.70	7.10	4.60	2.00	0	0
\$115	\$120	23.50	20.90	18.40	15.80	13.20	10.70	8.10	5.60	3.00	.40	0
\$120	\$125	24.50	21.90	19.40	16.80	14.20	11.70	9.10	6.60	4.00	1.40	0
\$125	\$130	25.50	22.90	20.40	17.80	15.20	12.70	10.10	7.60	5.00	2.40	0
\$130	\$135	26.50	23.90	21.40	18.80	16.20	13.70	11.10	8.60	6.00	3.40	.90
\$135	\$140	27.50	24.90	22.40	19.80	17.20	14.70	12.10	9.60	7.00	4.40	1.90
\$140	\$145	28.50	25.90	23.40	20.80	18.20	15.70	13.10	10.60	8.00	5.40	2.90
\$145	\$150	29.50	26.90	24.40	21.80	19.20	16.70	14.10	11.60	9.00	6.40	3.90
\$150	\$160	31.00	28.40	25.90	23.30	20.70	18.20	15.60	13.10	10.50	7.90	5.40
\$160	\$170	33.00	30.40	27.90	25.30	22.70	20.20	17.60	15.10	12.50	9.90	7.40
\$170	\$180	35.00	32.40	29.90	27.30	24.70	22.20	19.60	17.10	14.50	11.90	9.40
\$180	\$190	37.00	34.40	31.90	29.30	26.70	24.20	21.60	19.10	16.50	13.90	11.40
\$190	\$200	39.00	36.40	33.90	31.30	28.70	26.20	23.60	21.10	18.50	15.90	13.40
\$200 and over		20 percent of the excess over \$200 plus—										
		40.00	37.40	34.90	32.30	29.70	27.20	24.60	22.10	19.50	16.90	14.40

BIWEEKLY

If the payroll period with respect to an employee is biweekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$0	\$26	20% of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$26	\$28	\$5.40	.30	0	0	0	0	0	0	0	0	0
\$28	\$30	5.80	.70	0	0	0	0	0	0	0	0	0
\$30	\$32	6.20	1.10	0	0	0	0	0	0	0	0	0
\$32	\$34	6.60	1.50	0	0	0	0	0	0	0	0	0
\$34	\$36	7.00	1.90	0	0	0	0	0	0	0	0	0
\$36	\$38	7.40	2.30	0	0	0	0	0	0	0	0	0
\$38	\$40	7.80	2.70	0	0	0	0	0	0	0	0	0
\$40	\$42	8.20	3.10	0	0	0	0	0	0	0	0	0
\$42	\$44	8.60	3.50	0	0	0	0	0	0	0	0	0
\$44	\$46	9.00	3.90	0	0	0	0	0	0	0	0	0
\$46	\$48	9.40	4.30	0	0	0	0	0	0	0	0	0
\$48	\$50	9.80	4.70	0	0	0	0	0	0	0	0	0
\$50	\$52	10.20	5.10	0	0	0	0	0	0	0	0	0
\$52	\$54	10.60	5.50	.30	0	0	0	0	0	0	0	0
\$54	\$56	11.00	5.90	.70	0	0	0	0	0	0	0	0
\$56	\$58	11.40	6.30	1.10	0	0	0	0	0	0	0	0
\$58	\$60	11.80	6.70	1.50	0	0	0	0	0	0	0	0
\$60	\$62	12.20	7.10	1.90	0	0	0	0	0	0	0	0
\$62	\$64	12.60	7.50	2.30	0	0	0	0	0	0	0	0
\$64	\$66	13.00	7.90	2.70	0	0	0	0	0	0	0	0
\$66	\$68	13.40	8.30	3.10	0	0	0	0	0	0	0	0
\$68	\$70	13.80	8.70	3.50	0	0	0	0	0	0	0	0
\$70	\$72	14.20	9.10	3.90	0	0	0	0	0	0	0	0
\$72	\$74	14.60	9.50	4.30	0	0	0	0	0	0	0	0
\$74	\$76	15.00	9.90	4.70	0	0	0	0	0	0	0	0
\$76	\$78	15.40	10.30	5.10	0	0	0	0	0	0	0	0
\$78	\$80	15.80	10.70	5.50	.40	0	0	0	0	0	0	0
\$80	\$82	16.20	11.10	5.90	.80	0	0	0	0	0	0	0
\$82	\$84	16.60	11.50	6.30	1.20	0	0	0	0	0	0	0
\$84	\$86	17.00	11.90	6.70	1.60	0	0	0	0	0	0	0
\$86	\$88	17.40	12.30	7.10	2.00	0	0	0	0	0	0	0
\$88	\$90	17.80	12.70	7.50	2.40	0	0	0	0	0	0	0
\$90	\$92	18.20	13.10	7.90	2.80	0	0	0	0	0	0	0
\$92	\$94	18.60	13.50	8.30	3.20	0	0	0	0	0	0	0
\$94	\$96	19.00	13.90	8.70	3.60	0	0	0	0	0	0	0
\$96	\$98	19.40	14.30	9.10	4.00	0	0	0	0	0	0	0
\$98	\$100	19.80	14.70	9.50	4.40	0	0	0	0	0	0	0
\$100	\$102	20.20	15.10	9.90	4.80	0	0	0	0	0	0	0
\$102	\$104	20.60	15.50	10.30	5.20	.10	0	0	0	0	0	0
\$104	\$106	21.00	15.90	10.70	5.60	.50	0	0	0	0	0	0
\$106	\$108	21.40	16.30	11.10	6.00	.90	0	0	0	0	0	0
\$108	\$110	21.80	16.70	11.50	6.40	1.30	0	0	0	0	0	0

BIWEEKLY — Continued

If the payroll period with respect to an employee is biweekly

And the wages are—		And the number of withholding exemptions claimed is—											
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more	
		The amount of tax to be withheld shall be—											
\$110	\$112	\$22.20	\$17.10	\$11.90	\$6.80	\$1.70	\$0	\$0	\$0	\$0	\$0	\$0	
\$112	\$114	22.60	17.50	12.30	7.20	2.10	0	0	0	0	0	0	
\$114	\$116	23.00	17.90	12.70	7.60	2.50	0	0	0	0	0	0	
\$116	\$118	23.40	18.30	13.10	8.00	2.90	0	0	0	0	0	0	
\$118	\$120	23.80	18.70	13.50	8.40	3.30	0	0	0	0	0	0	
\$120	\$124	24.40	19.30	14.10	9.00	3.90	0	0	0	0	0	0	
\$124	\$128	25.20	20.10	14.90	9.80	4.70	0	0	0	0	0	0	
\$128	\$132	26.00	20.90	15.70	10.60	5.50	.40	0	0	0	0	0	
\$132	\$136	26.80	21.70	16.50	11.40	6.30	1.20	0	0	0	0	0	
\$136	\$140	27.60	22.50	17.30	12.20	7.10	2.00	0	0	0	0	0	
\$140	\$144	28.40	23.30	18.10	13.00	7.90	2.80	0	0	0	0	0	
\$144	\$148	29.20	24.10	18.90	13.80	8.70	3.60	0	0	0	0	0	
\$148	\$152	30.00	24.90	19.70	14.60	9.50	4.40	0	0	0	0	0	
\$152	\$156	30.80	25.70	20.50	15.40	10.30	5.20	0	0	0	0	0	
\$156	\$160	31.60	26.50	21.30	16.20	11.10	6.00	.80	0	0	0	0	
\$160	\$164	32.40	27.30	22.10	17.00	11.90	6.80	1.60	0	0	0	0	
\$164	\$168	33.20	28.10	22.90	17.80	12.70	7.60	2.40	0	0	0	0	
\$168	\$172	34.00	28.90	23.70	18.60	13.50	8.40	3.20	0	0	0	0	
\$172	\$176	34.80	29.70	24.50	19.40	14.30	9.20	4.00	0	0	0	0	
\$176	\$180	35.60	30.50	25.30	20.20	15.10	10.00	4.80	0	0	0	0	
\$180	\$184	36.40	31.30	26.10	21.00	15.90	10.80	5.60	.50	0	0	0	
\$184	\$188	37.20	32.10	26.90	21.80	16.70	11.60	6.40	1.30	0	0	0	
\$188	\$192	38.00	32.90	27.70	22.60	17.50	12.40	7.20	2.10	0	0	0	
\$192	\$196	38.80	33.70	28.50	23.40	18.30	13.20	8.00	2.90	0	0	0	
\$196	\$200	39.60	34.50	29.30	24.20	19.10	14.00	8.80	3.70	0	0	0	
\$200	\$210	41.00	35.90	30.70	25.60	20.50	15.40	10.20	5.10	0	0	0	
\$210	\$220	43.00	37.90	32.70	27.60	22.50	17.40	12.20	7.10	2.00	0	0	
\$220	\$230	45.00	39.90	34.70	29.60	24.50	19.40	14.20	9.10	4.00	0	0	
\$230	\$240	47.00	41.90	36.70	31.60	26.50	21.40	16.20	11.10	6.00	.80	0	
\$240	\$250	49.00	43.90	38.70	33.60	28.50	23.40	18.20	13.10	8.00	2.80	0	
\$250	\$260	51.00	45.90	40.70	35.60	30.50	25.40	20.20	15.10	10.00	4.80	0	
\$260	\$270	53.00	47.90	42.70	37.60	32.50	27.40	22.20	17.10	12.00	6.80	1.70	
\$270	\$280	55.00	49.90	44.70	39.60	34.50	29.40	24.20	19.10	14.00	8.80	3.70	
\$280	\$290	57.00	51.90	46.70	41.60	36.50	31.40	26.20	21.10	16.00	10.80	5.70	
\$290	\$300	59.00	53.90	48.70	43.60	38.50	33.40	28.20	23.10	18.00	12.80	7.70	
\$300	\$320	62.00	56.90	51.70	46.60	41.50	36.40	31.20	26.10	21.00	15.80	10.70	
\$320	\$340	66.00	60.90	55.70	50.60	45.50	40.40	35.20	30.10	25.00	19.80	14.70	
\$340	\$360	70.00	64.90	59.70	54.60	49.50	44.40	39.20	34.10	29.00	23.80	18.70	
\$360	\$380	74.00	68.90	63.70	58.60	53.50	48.40	43.20	38.10	33.00	27.80	22.70	
\$380	\$400	78.00	72.90	67.70	62.60	57.50	52.40	47.20	42.10	37.00	31.80	26.70	
\$400 and over		20 percent of the excess over \$400 plus—											
		80.00	74.90	69.70	64.60	59.50	54.40	49.20	44.10	39.00	33.80	28.70	

SEMI-MONTHLY

If the payroll period with respect to an employee is semi-monthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$0	\$28	20% of wages \$5.80	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$28	\$30	.20	0	0	0	0	0	0	0	0	0	0
\$30	\$32	6.20	0	0	0	0	0	0	0	0	0	0
\$32	\$34	6.60	0	0	0	0	0	0	0	0	0	0
\$34	\$36	7.00	0	0	0	0	0	0	0	0	0	0
\$36	\$38	7.40	0	0	0	0	0	0	0	0	0	0
\$38	\$40	7.80	0	0	0	0	0	0	0	0	0	0
\$40	\$42	8.20	0	0	0	0	0	0	0	0	0	0
\$42	\$44	8.60	0	0	0	0	0	0	0	0	0	0
\$44	\$46	9.00	0	0	0	0	0	0	0	0	0	0
\$46	\$48	9.40	0	0	0	0	0	0	0	0	0	0
\$48	\$50	9.80	0	0	0	0	0	0	0	0	0	0
\$50	\$52	10.20	0	0	0	0	0	0	0	0	0	0
\$52	\$54	10.60	0	0	0	0	0	0	0	0	0	0
\$54	\$56	11.00	0	0	0	0	0	0	0	0	0	0
\$56	\$58	11.40	.30	0	0	0	0	0	0	0	0	0
\$58	\$60	11.80	.70	0	0	0	0	0	0	0	0	0
\$60	\$62	12.20	6.60	1.10	0	0	0	0	0	0	0	0
\$62	\$64	12.60	7.00	1.50	0	0	0	0	0	0	0	0
\$64	\$66	13.00	7.40	1.90	0	0	0	0	0	0	0	0
\$66	\$68	13.40	7.80	2.30	0	0	0	0	0	0	0	0
\$68	\$70	13.80	8.20	2.70	0	0	0	0	0	0	0	0
\$70	\$72	14.20	8.60	3.10	0	0	0	0	0	0	0	0
\$72	\$74	14.60	9.00	3.50	0	0	0	0	0	0	0	0
\$74	\$76	15.00	9.40	3.90	0	0	0	0	0	0	0	0
\$76	\$78	15.40	9.80	4.30	0	0	0	0	0	0	0	0
\$78	\$80	15.80	10.20	4.70	0	0	0	0	0	0	0	0
\$80	\$82	16.20	10.60	5.10	0	0	0	0	0	0	0	0
\$82	\$84	16.60	11.00	5.50	0	0	0	0	0	0	0	0
\$84	\$86	17.00	11.40	5.90	.30	0	0	0	0	0	0	0
\$86	\$88	17.40	11.80	6.30	.70	0	0	0	0	0	0	0
\$88	\$90	17.80	12.20	6.70	1.10	0	0	0	0	0	0	0
\$90	\$92	18.20	12.60	7.10	1.50	0	0	0	0	0	0	0
\$92	\$94	18.60	13.00	7.50	1.90	0	0	0	0	0	0	0
\$94	\$96	19.00	13.40	7.90	2.30	0	0	0	0	0	0	0
\$96	\$98	19.40	13.80	8.30	2.70	0	0	0	0	0	0	0
\$98	\$100	19.80	14.20	8.70	3.10	0	0	0	0	0	0	0
\$100	\$102	20.20	14.60	9.10	3.50	0	0	0	0	0	0	0
\$102	\$104	20.60	15.00	9.50	3.90	0	0	0	0	0	0	0
\$104	\$106	21.00	15.40	9.90	4.30	0	0	0	0	0	0	0
\$106	\$108	21.40	15.80	10.30	4.70	0	0	0	0	0	0	0
\$108	\$110	21.80	16.20	10.70	5.10	0	0	0	0	0	0	0
\$110	\$112	22.20	16.60	11.10	5.50	0	0	0	0	0	0	0
\$112	\$114	22.60	17.00	11.50	5.90	.40	0	0	0	0	0	0
\$114	\$116	23.00	17.40	11.90	6.30	.80	0	0	0	0	0	0
\$116	\$118	23.40	17.80	12.30	6.70	1.20	0	0	0	0	0	0
\$118	\$120	23.80	18.20	12.70	7.10	1.60	0	0	0	0	0	0

SEMIMONTHLY — Continued

If the payroll period with respect to an employee is semimonthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$120	\$124	\$24.40	\$18.80	\$13.80	\$7.70	\$2.20	\$0	\$0	\$0	\$0	\$0	\$0
\$124	\$128	25.20	19.60	14.10	8.50	3.00	0	0	0	0	0	0
\$128	\$132	26.00	20.40	14.90	9.30	3.80	0	0	0	0	0	0
\$132	\$136	26.80	21.20	15.70	10.10	4.60	0	0	0	0	0	0
\$136	\$140	27.60	22.00	16.50	10.90	5.40	0	0	0	0	0	0
\$140	\$144	28.40	22.80	17.30	11.70	6.20	.60	0	0	0	0	0
\$144	\$148	29.20	23.60	18.10	12.50	7.00	1.40	0	0	0	0	0
\$148	\$152	30.00	24.40	18.90	13.30	7.80	2.20	0	0	0	0	0
\$152	\$156	30.80	25.20	19.70	14.10	8.60	3.00	0	0	0	0	0
\$156	\$160	31.60	26.00	20.50	14.90	9.40	3.80	0	0	0	0	0
\$160	\$164	32.40	26.80	21.30	15.70	10.20	4.60	0	0	0	0	0
\$164	\$168	33.20	27.60	22.10	16.50	11.00	5.40	0	0	0	0	0
\$168	\$172	34.00	28.40	22.90	17.30	11.80	6.20	.70	0	0	0	0
\$172	\$176	34.80	29.20	23.70	18.10	12.60	7.00	1.50	0	0	0	0
\$176	\$180	35.60	30.00	24.50	18.90	13.40	7.80	2.30	0	0	0	0
\$180	\$184	36.40	30.80	25.30	19.70	14.20	8.60	3.10	0	0	0	0
\$184	\$188	37.20	31.60	26.10	20.50	15.00	9.40	3.90	0	0	0	0
\$188	\$192	38.00	32.40	26.90	21.30	15.80	10.20	4.70	0	0	0	0
\$192	\$196	38.80	33.20	27.70	22.10	16.60	11.00	5.50	0	0	0	0
\$196	\$200	39.60	34.00	28.50	22.90	17.40	11.80	6.30	.70	0	0	0
\$200	\$210	41.00	35.40	29.90	24.30	18.80	13.20	7.70	2.10	0	0	0
\$210	\$220	43.00	37.40	31.90	26.30	20.80	15.20	9.70	4.10	0	0	0
\$220	\$230	45.00	39.40	33.90	28.30	22.80	17.20	11.70	6.10	.80	0	0
\$230	\$240	47.00	41.40	35.90	30.30	24.80	19.20	13.70	8.10	2.60	0	0
\$240	\$250	49.00	43.40	37.90	32.30	26.80	21.20	15.70	10.10	4.60	0	0
\$250	\$260	51.00	45.40	39.90	34.30	28.80	23.20	17.70	12.10	6.60	1.00	0
\$260	\$270	53.00	47.40	41.90	36.30	30.80	25.20	19.70	14.10	8.60	3.00	0
\$270	\$280	55.00	49.40	43.90	38.30	32.80	27.20	21.70	16.10	10.60	5.00	0
\$280	\$290	57.00	51.40	45.90	40.30	34.80	29.20	23.70	18.10	12.60	7.00	1.40
\$290	\$300	59.00	53.40	47.90	42.30	36.80	31.20	25.70	20.10	14.60	9.00	3.40
\$300	\$320	62.00	56.40	50.90	45.30	39.80	34.20	28.70	23.10	17.60	12.00	6.40
\$320	\$340	66.00	60.40	54.90	49.30	43.80	38.20	32.70	27.10	21.60	16.00	10.40
\$340	\$360	70.00	64.40	58.90	53.30	47.80	42.20	36.70	31.10	25.60	20.00	14.40
\$360	\$380	74.00	68.40	62.90	57.30	51.80	46.20	40.70	35.10	29.60	24.00	18.40
\$380	\$400	78.00	72.40	66.90	61.30	55.80	50.20	44.70	39.10	33.60	28.00	22.40
\$400	\$420	82.00	76.40	70.90	65.30	59.80	54.20	48.70	43.10	37.60	32.00	26.40
\$420	\$440	86.00	80.40	74.90	69.30	63.80	58.20	52.70	47.19	41.60	36.00	30.40
\$440	\$460	90.00	84.40	78.90	73.30	67.80	62.20	56.70	51.10	45.60	40.00	34.40
\$460	\$480	94.00	88.40	82.90	77.30	71.80	66.20	60.70	55.10	49.60	44.00	38.40
\$480	\$500	98.00	92.40	86.90	81.30	75.80	70.20	64.70	59.10	53.60	48.00	42.40
\$500 and over		20 percent of the excess over \$500 plus—										
		100.00	94.40	88.90	83.30	77.80	72.20	66.70	61.10	55.60	50.00	44.40

INCOME TAX AT SOURCE

§ 1622

MONTHLY

If the payroll period with respect to an employee is monthly

And the wages are—		And the number of withholding exemptions claimed is—											
At least—	But less than—	0	1	2	3	4	5	6	7	8	9	10 or more	
		The amount of tax to be withheld shall be—											
\$0	\$56	20% of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
\$56	\$60	\$11.60	.50	0	0	0	0	0	0	0	0	0	
\$60	\$64	12.40	1.30	0	0	0	0	0	0	0	0	0	
\$64	\$68	13.20	2.10	0	0	0	0	0	0	0	0	0	
\$68	\$72	14.00	2.90	0	0	0	0	0	0	0	0	0	
\$72	\$76	14.80	3.70	0	0	0	0	0	0	0	0	0	
\$76	\$80	15.60	4.50	0	0	0	0	0	0	0	0	0	
\$80	\$84	16.40	5.30	0	0	0	0	0	0	0	0	0	
\$84	\$88	17.20	6.10	0	0	0	0	0	0	0	0	0	
\$88	\$92	18.00	6.90	0	0	0	0	0	0	0	0	0	
\$92	\$96	18.80	7.70	0	0	0	0	0	0	0	0	0	
\$96	\$100	19.60	8.50	0	0	0	0	0	0	0	0	0	
\$100	\$104	20.40	9.30	0	0	0	0	0	0	0	0	0	
\$104	\$108	21.20	10.10	0	0	0	0	0	0	0	0	0	
\$108	\$112	22.00	10.90	0	0	0	0	0	0	0	0	0	
\$112	\$116	22.80	11.70	.60	0	0	0	0	0	0	0	0	
\$116	\$120	23.60	12.50	1.40	0	0	0	0	0	0	0	0	
\$120	\$124	24.40	13.30	2.20	0	0	0	0	0	0	0	0	
\$124	\$128	25.20	14.10	3.00	0	0	0	0	0	0	0	0	
\$128	\$132	26.00	14.90	3.80	0	0	0	0	0	0	0	0	
\$132	\$136	26.80	15.70	4.60	0	0	0	0	0	0	0	0	
\$136	\$140	27.60	16.50	5.40	0	0	0	0	0	0	0	0	
\$140	\$144	28.40	17.30	6.20	0	0	0	0	0	0	0	0	
\$144	\$148	29.20	18.10	7.00	0	0	0	0	0	0	0	0	
\$148	\$152	30.00	18.90	7.80	0	0	0	0	0	0	0	0	
\$152	\$156	30.80	19.70	8.60	0	0	0	0	0	0	0	0	
\$156	\$160	31.60	20.50	9.40	0	0	0	0	0	0	0	0	
\$160	\$164	32.40	21.30	10.20	0	0	0	0	0	0	0	0	
\$164	\$168	33.20	22.10	11.00	0	0	0	0	0	0	0	0	
\$168	\$172	34.00	22.90	11.80	.70	0	0	0	0	0	0	0	
\$172	\$176	34.80	23.70	12.60	1.50	0	0	0	0	0	0	0	
\$176	\$180	35.60	24.50	13.40	2.30	0	0	0	0	0	0	0	
\$180	\$184	36.40	25.30	14.20	3.10	0	0	0	0	0	0	0	
\$184	\$188	37.20	26.10	15.00	3.90	0	0	0	0	0	0	0	
\$188	\$192	38.00	26.90	15.80	4.70	0	0	0	0	0	0	0	
\$192	\$196	38.80	27.70	16.60	5.50	0	0	0	0	0	0	0	
\$196	\$200	39.60	28.50	17.40	6.30	0	0	0	0	0	0	0	
\$200	\$204	40.40	29.30	18.20	7.10	0	0	0	0	0	0	0	
\$204	\$208	41.20	30.10	19.00	7.90	0	0	0	0	0	0	0	
\$208	\$212	42.00	30.90	19.80	8.70	0	0	0	0	0	0	0	
\$212	\$216	42.80	31.70	20.60	9.50	0	0	0	0	0	0	0	
\$216	\$220	43.60	32.50	21.40	10.30	0	0	0	0	0	0	0	
\$220	\$224	44.40	33.30	22.20	11.10	0	0	0	0	0	0	0	
\$224	\$228	45.20	34.10	23.00	11.90	.80	0	0	0	0	0	0	
\$228	\$232	46.00	34.90	23.80	12.70	1.60	0	0	0	0	0	0	

MONTHLY — Continued

If the payroll period with respect to an employee is monthly

And the wages are—		And the number of withholding exemptions claimed is—											
At least—	But less than—	0	1	2	3	4	5	6	7	8	9	10 or more	
		The amount of tax to be withheld shall be—											
\$232	\$236	\$46.80	\$35.70	\$24.60	\$13.50	\$2.40	\$0	\$0	\$0	\$0	\$0	\$0	
\$236	\$240	47.60	36.50	25.40	14.30	3.20	0	0	0	0	0	0	
\$240	\$248	48.80	37.70	26.60	15.50	4.40	0	0	0	0	0	0	
\$248	\$256	50.40	39.30	28.20	17.10	6.00	0	0	0	0	0	0	
\$256	\$264	52.00	40.90	29.80	18.70	7.60	0	0	0	0	0	0	
\$264	\$272	53.60	42.50	31.40	20.30	9.20	0	0	0	0	0	0	
\$272	\$280	55.20	44.10	33.00	21.90	10.80	0	0	0	0	0	0	
\$280	\$288	56.80	45.70	34.60	23.50	12.40	1.20	0	0	0	0	0	
\$288	\$296	58.40	47.30	36.20	25.10	14.00	2.80	0	0	0	0	0	
\$296	\$304	60.00	48.90	37.80	26.70	15.60	4.40	0	0	0	0	0	
\$304	\$312	61.60	50.50	39.40	28.30	17.20	6.00	0	0	0	0	0	
\$312	\$320	63.20	52.10	41.00	29.90	18.80	7.60	0	0	0	0	0	
\$320	\$328	64.80	53.70	42.60	31.50	20.40	9.20	0	0	0	0	0	
\$328	\$336	66.40	55.30	44.20	33.10	22.00	10.80	0	0	0	0	0	
\$336	\$344	68.00	56.90	45.80	34.70	23.60	12.40	1.30	0	0	0	0	
\$344	\$352	69.60	58.50	47.40	36.30	25.20	14.00	2.90	0	0	0	0	
\$352	\$360	71.20	60.10	49.00	37.90	26.80	15.60	4.50	0	0	0	0	
\$360	\$368	72.80	61.70	50.60	39.50	28.40	17.20	6.10	0	0	0	0	
\$368	\$376	74.40	63.30	52.20	41.10	30.00	18.80	7.70	0	0	0	0	
\$376	\$384	76.00	64.90	53.80	42.70	31.60	20.40	9.30	0	0	0	0	
\$384	\$392	77.60	66.50	55.40	44.30	33.20	22.00	10.90	0	0	0	0	
\$392	\$400	79.20	68.10	57.00	45.90	34.80	23.60	12.50	1.40	0	0	0	
\$400	\$420	82.00	70.90	59.80	48.70	37.60	26.40	15.30	4.20	0	0	0	
\$420	\$440	86.00	74.90	63.80	52.70	41.60	30.40	19.30	8.20	0	0	0	
\$440	\$460	90.00	78.90	67.80	56.70	45.60	34.40	23.30	12.20	1.10	0	0	
\$460	\$480	94.00	82.90	71.80	60.70	49.60	38.40	27.30	16.20	5.10	0	0	
\$480	\$500	98.00	86.90	75.80	64.70	53.60	42.40	31.30	20.20	9.10	0	0	
\$500	\$520	102.00	90.90	79.80	68.70	57.60	46.40	35.30	24.20	13.10	2.00	0	
\$520	\$540	106.00	94.90	83.80	72.70	61.60	50.40	39.30	28.20	17.10	6.00	0	
\$540	\$560	110.00	98.90	87.80	76.70	65.60	54.40	43.30	32.20	21.10	10.00	0	
\$560	\$580	114.00	102.90	91.80	80.70	69.60	58.40	47.30	36.20	25.10	14.00	2.90	
\$580	\$600	118.00	106.90	95.80	84.70	73.60	62.40	51.30	40.20	29.10	18.00	6.90	
\$600	\$640	124.00	112.90	101.80	90.70	79.60	68.40	57.30	46.20	35.10	24.00	12.90	
\$640	\$680	132.00	120.90	109.80	98.70	87.60	76.40	65.30	54.20	43.10	32.00	20.90	
\$680	\$720	140.00	128.90	117.80	106.70	95.60	84.40	73.30	62.20	51.10	40.00	28.90	
\$720	\$760	148.00	136.90	125.80	114.70	103.60	92.40	81.30	70.20	59.10	48.00	36.90	
\$760	\$800	156.00	144.90	133.80	122.70	111.60	100.40	89.30	78.20	67.10	56.00	44.90	
\$800	\$840	164.00	152.90	141.80	130.70	119.60	108.40	97.30	86.20	75.10	64.00	52.90	
\$840	\$880	172.00	160.90	149.80	138.70	127.60	116.40	105.30	94.20	83.10	72.00	60.90	
\$880	\$920	180.00	168.90	157.80	146.70	135.60	124.40	113.30	102.20	91.10	80.00	68.90	
\$920	\$960	188.00	176.90	165.80	154.70	143.60	132.40	121.30	110.20	99.10	88.00	76.90	
\$960	\$1,000	196.00	184.90	173.80	162.70	151.60	140.40	129.30	118.20	107.10	96.00	84.90	
\$1,000 and over		20 percent of the excess over \$1,000 plus—											
		200.00	188.90	177.80	166.70	155.60	144.40	133.30	122.20	111.10	100.00	88.90	

DAILY OR MISCELLANEOUS

If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least—	But less than—	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
\$0	\$2.00	20% of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$2.00	\$2.25	\$0.40	.05	0	0	0	0	0	0	0	0	0
\$2.25	\$2.50	.45	.10	0	0	0	0	0	0	0	0	0
\$2.50	\$2.75	.50	.15	0	0	0	0	0	0	0	0	0
\$2.75	\$3.00	.55	.20	0	0	0	0	0	0	0	0	0
\$3.00	\$3.25	.60	.25	0	0	0	0	0	0	0	0	0
\$3.25	\$3.50	.65	.30	0	0	0	0	0	0	0	0	0
\$3.50	\$3.75	.70	.35	0	0	0	0	0	0	0	0	0
\$3.75	\$4.00	.75	.40	.05	0	0	0	0	0	0	0	0
\$4.00	\$4.25	.80	.45	.10	0	0	0	0	0	0	0	0
\$4.25	\$4.50	.85	.50	.15	0	0	0	0	0	0	0	0
\$4.50	\$4.75	.90	.55	.20	0	0	0	0	0	0	0	0
\$4.75	\$5.00	.95	.60	.25	0	0	0	0	0	0	0	0
\$5.00	\$5.25	1.00	.65	.30	0	0	0	0	0	0	0	0
\$5.25	\$5.50	1.05	.70	.35	0	0	0	0	0	0	0	0
\$5.50	\$5.75	1.10	.75	.40	.05	0	0	0	0	0	0	0
\$5.75	\$6.00	1.15	.80	.45	.10	0	0	0	0	0	0	0
\$6.00	\$6.25	1.20	.85	.50	.15	0	0	0	0	0	0	0
\$6.25	\$6.50	1.25	.90	.55	.20	0	0	0	0	0	0	0
\$6.50	\$6.75	1.30	.95	.60	.25	0	0	0	0	0	0	0
\$6.75	\$7.00	1.35	1.00	.65	.30	0	0	0	0	0	0	0
\$7.00	\$7.25	1.40	1.05	.70	.35	0	0	0	0	0	0	0
\$7.25	\$7.50	1.45	1.10	.75	.40	0	0	0	0	0	0	0
\$7.50	\$7.75	1.50	1.15	.80	.45	.05	0	0	0	0	0	0
\$7.75	\$8.00	1.55	1.20	.85	.50	.10	0	0	0	0	0	0
\$8.00	\$8.25	1.60	1.25	.90	.55	.15	0	0	0	0	0	0
\$8.25	\$8.50	1.65	1.30	.95	.60	.20	0	0	0	0	0	0
\$8.50	\$8.75	1.70	1.35	1.00	.65	.25	0	0	0	0	0	0
\$8.75	\$9.00	1.75	1.40	1.05	.70	.30	0	0	0	0	0	0
\$9.00	\$9.25	1.80	1.45	1.10	.75	.35	0	0	0	0	0	0
\$9.25	\$9.50	1.85	1.50	1.15	.80	.40	.05	0	0	0	0	0
\$9.50	\$9.75	1.90	1.55	1.20	.85	.45	.10	0	0	0	0	0
\$9.75	\$10.00	1.95	1.60	1.25	.90	.50	.15	0	0	0	0	0

DAILY OR MISCELLANEOUS — Continued

If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period

And the wages divided by the number of days in each period are—		And the number of withholding exemptions claimed is—									
		0	1	2	3	4	5	6	7	8	9 or more
At least—	But less than—	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—									
\$10.00	\$10.50	\$2.05	\$1.70	\$1.30	\$1.95	\$1.60	\$2.20	\$0	\$0	\$0	\$0
\$10.50	\$11.00	2.15	1.80	1.40	1.05	.70	.30	0	0	0	0
\$11.00	\$11.50	2.25	1.90	1.50	1.15	.80	.40	.05	0	0	.0
\$11.50	\$12.00	2.35	2.00	1.60	1.25	.90	.50	.15	0	0	0
\$12.00	\$12.50	2.45	2.10	1.70	1.35	1.00	.60	.25	0	0	0
\$12.50	\$13.00	2.55	2.20	1.80	1.45	1.10	.70	.35	0	0	0
\$13.00	\$13.50	2.65	2.30	1.90	1.55	1.20	.80	.45	.10	0	0
\$13.50	\$14.00	2.75	2.40	2.00	1.65	1.30	.90	.55	.20	0	0
\$14.00	\$14.50	2.85	2.50	2.10	1.75	1.40	1.00	.65	.30	0	0
\$14.50	\$15.00	2.95	2.60	2.20	1.85	1.50	1.10	.75	.40	.05	0
\$15.00	\$15.50	3.05	2.70	2.30	1.95	1.60	1.20	.85	.50	.15	0
\$15.50	\$16.00	3.15	2.80	2.40	2.05	1.70	1.30	.95	.60	.25	0
\$16.00	\$16.50	3.25	2.90	2.50	2.15	1.80	1.40	1.05	.70	.35	0
\$16.50	\$17.00	3.35	3.00	2.60	2.25	1.90	1.50	1.15	.80	.45	.05
\$17.00	\$17.50	3.45	3.10	2.70	2.35	2.00	1.60	1.25	.90	.55	.15
\$17.50	\$18.00	3.55	3.20	2.80	2.45	2.10	1.70	1.35	1.00	.65	.25
\$18.00	\$18.50	3.65	3.30	2.90	2.55	2.20	1.80	1.45	1.10	.75	.35
\$18.50	\$19.00	3.75	3.40	3.00	2.65	2.30	1.90	1.55	1.20	.85	.45
\$19.00	\$19.50	3.85	3.50	3.10	2.75	2.40	2.00	1.65	1.30	.95	.55
\$19.50	\$20.00	3.95	3.60	3.20	2.85	2.50	2.10	1.75	1.40	1.05	.65
\$20.00	\$21.00	4.10	3.75	3.35	3.00	2.65	2.25	1.90	1.55	1.20	.80
\$21.00	\$22.00	4.30	3.95	3.55	3.20	2.85	2.45	2.10	1.75	1.40	1.00
\$22.00	\$23.00	4.50	4.15	3.75	3.40	3.05	2.65	2.30	1.95	1.60	1.20
\$23.00	\$24.00	4.70	4.35	3.95	3.60	3.25	2.85	2.50	2.15	1.80	1.40
\$24.00	\$25.00	4.90	4.55	4.15	3.80	3.45	3.05	2.70	2.35	2.00	1.60
\$25.00	\$26.00	5.10	4.75	4.35	4.00	3.65	3.25	2.90	2.55	2.20	1.80
\$26.00	\$27.00	5.30	4.95	4.55	4.20	3.85	3.45	3.10	2.75	2.40	2.00
\$27.00	\$28.00	5.50	5.15	4.75	4.40	4.05	3.65	3.30	2.95	2.60	2.20
\$28.00	\$29.00	5.70	5.35	4.95	4.60	4.25	3.85	3.50	3.15	2.80	2.40
\$29.00	\$30.00	5.90	5.55	5.15	4.80	4.45	4.05	3.70	3.35	3.00	2.60
\$30 and over		20 percent of the excess over \$30 plus—									
		6.00	5.65	5.25	4.90	4.55	4.15	3.80	3.45	3.10	2.70
											2.35

(B) Wages paid after December 31, 1953. At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee after December 31, 1953, a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a):

INCOME TAX AT SOURCE

\$ 1622

"If the pay-roll period with respect to an employee is weekly

And the wages are		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$0.....	\$13.....	18% of wages \$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$13.....	\$14.....	\$2.40	.10	0	0	0	0	0	0	0	0	0
\$14.....	\$15.....	2.60	.30	0	0	0	0	0	0	0	0	0
\$15.....	\$16.....	2.80	.50	0	0	0	0	0	0	0	0	0
\$16.....	\$17.....	3.00	.70	0	0	0	0	0	0	0	0	0
\$17.....	\$18.....	3.20	.80	0	0	0	0	0	0	0	0	0
\$18.....	\$19.....	3.30	1.00	0	0	0	0	0	0	0	0	0
\$19.....	\$20.....	3.50	1.20	0	0	0	0	0	0	0	0	0
\$20.....	\$21.....	3.70	1.40	0	0	0	0	0	0	0	0	0
\$21.....	\$22.....	3.90	1.60	0	0	0	0	0	0	0	0	0
\$22.....	\$23.....	4.10	1.70	0	0	0	0	0	0	0	0	0
\$23.....	\$24.....	4.20	1.90	0	0	0	0	0	0	0	0	0
\$24.....	\$25.....	4.40	2.10	0	0	0	0	0	0	0	0	0
\$25.....	\$26.....	4.60	2.30	0	0	0	0	0	0	0	0	0
\$26.....	\$27.....	4.80	2.50	.20	0	0	0	0	0	0	0	0
\$27.....	\$28.....	5.00	2.60	.30	0	0	0	0	0	0	0	0
\$28.....	\$29.....	5.10	2.80	.50	0	0	0	0	0	0	0	0
\$29.....	\$30.....	5.30	3.00	.70	0	0	0	0	0	0	0	0
\$30.....	\$31.....	5.50	3.20	.90	0	0	0	0	0	0	0	0
\$31.....	\$32.....	5.70	3.40	1.10	0	0	0	0	0	0	0	0
\$32.....	\$33.....	5.90	3.50	1.20	0	0	0	0	0	0	0	0
\$33.....	\$34.....	6.00	3.70	1.40	0	0	0	0	0	0	0	0
\$34.....	\$35.....	6.20	3.90	1.60	0	0	0	0	0	0	0	0
\$35.....	\$36.....	6.40	4.10	1.80	0	0	0	0	0	0	0	0
\$36.....	\$37.....	6.60	4.30	2.00	0	0	0	0	0	0	0	0
\$37.....	\$38.....	6.80	4.40	2.10	0	0	0	0	0	0	0	0
\$38.....	\$39.....	6.90	4.60	2.30	0	0	0	0	0	0	0	0
\$39.....	\$40.....	7.10	4.80	2.50	.20	0	0	0	0	0	0	0
\$40.....	\$41.....	7.30	5.00	2.70	.40	0	0	0	0	0	0	0
\$41.....	\$42.....	7.50	5.20	2.90	.50	0	0	0	0	0	0	0
\$42.....	\$43.....	7.70	5.30	3.00	.70	0	0	0	0	0	0	0
\$43.....	\$44.....	7.80	5.50	3.20	.90	0	0	0	0	0	0	0
\$44.....	\$45.....	8.00	5.70	3.40	1.10	0	0	0	0	0	0	0
\$45.....	\$46.....	8.20	5.90	3.60	1.30	0	0	0	0	0	0	0
\$46.....	\$47.....	8.40	6.10	3.80	1.40	0	0	0	0	0	0	0
\$47.....	\$48.....	8.60	6.20	3.90	1.60	0	0	0	0	0	0	0
\$48.....	\$49.....	8.70	6.40	4.10	1.80	0	0	0	0	0	0	0
\$49.....	\$50.....	8.90	6.60	4.30	2.00	0	0	0	0	0	0	0
\$50.....	\$51.....	9.10	6.80	4.50	2.20	0	0	0	0	0	0	0
\$51.....	\$52.....	9.30	7.00	4.70	2.30	0	0	0	0	0	0	0
\$52.....	\$53.....	9.50	7.10	4.80	2.50	.20	0	0	0	0	0	0
\$53.....	\$54.....	9.60	7.30	5.00	2.70	.40	0	0	0	0	0	0
\$54.....	\$55.....	9.80	7.50	5.20	2.90	.60	0	0	0	0	0	0
\$55.....	\$56.....	10.00	7.70	5.40	3.10	.80	0	0	0	0	0	0
\$56.....	\$57.....	10.20	7.90	5.60	3.20	.90	0	0	0	0	0	0
\$57.....	\$58.....	10.40	8.00	5.70	3.40	1.10	0	0	0	0	0	0
\$58.....	\$59.....	10.50	8.20	5.90	3.60	1.30	0	0	0	0	0	0
\$59.....	\$60.....	10.70	8.40	6.10	3.80	1.50	0	0	0	0	0	0
\$60.....	\$62.....	11.00	8.70	6.40	4.10	1.70	0	0	0	0	0	0
\$62.....	\$64.....	11.30	9.00	6.70	4.40	2.10	0	0	0	0	0	0
\$64.....	\$66.....	11.70	9.40	7.10	4.80	2.50	.20	0	0	0	0	0
\$66.....	\$68.....	12.10	9.80	7.40	5.10	2.80	.50	0	0	0	0	0
\$68.....	\$70.....	12.40	10.10	7.80	5.50	3.20	.90	0	0	0	0	0
\$70.....	\$72.....	12.80	10.50	8.20	5.90	3.50	1.20	0	0	0	0	0
\$72.....	\$74.....	13.10	10.80	8.50	6.20	3.90	1.60	0	0	0	0	0
\$74.....	\$76.....	13.50	11.20	8.90	6.60	4.20	2.00	0	0	0	0	0
\$76.....	\$78.....	13.60	11.60	9.20	6.90	4.60	2.30	0	0	0	0	0
\$78.....	\$80.....	14.20	11.90	9.60	7.30	5.00	2.70	.40	0	0	0	0
\$80.....	\$82.....	14.60	12.30	10.00	7.70	5.30	3.00	.70	0	0	0	0
\$82.....	\$84.....	14.90	12.60	10.30	8.00	5.70	3.40	1.10	0	0	0	0
\$84.....	\$86.....	15.30	13.00	10.70	8.40	6.10	3.80	1.50	0	0	0	0
\$86.....	\$88.....	15.70	13.40	11.00	8.70	6.40	4.10	1.80	0	0	0	0
\$88.....	\$90.....	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0	0	0	0
\$90.....	\$92.....	16.40	14.10	11.80	9.50	7.10	4.80	2.50	.20	0	0	0
\$92.....	\$94.....	16.70	14.40	12.10	9.80	7.50	5.20	2.90	.60	0	0	0
\$94.....	\$96.....	17.10	14.80	12.50	10.20	7.90	5.60	3.30	.90	0	0	0
\$96.....	\$98.....	17.50	15.20	12.90	10.50	8.20	5.90	3.60	1.30	0	0	0
\$98.....	\$100.....	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70	0	0	0
\$100.....	\$105.....	18.50	16.10	13.80	11.50	9.20	6.90	4.60	2.30	0	0	0
\$105.....	\$110.....	19.40	17.00	14.70	12.40	10.10	7.80	5.50	3.20	.90	0	0
\$110.....	\$115.....	20.30	17.90	15.60	13.30	11.00	8.70	6.40	4.10	1.80	0	0
\$115.....	\$120.....	21.20	18.80	16.50	14.20	11.90	9.60	7.30	5.00	2.70	.40	0
\$120.....	\$125.....	22.10	19.70	17.40	15.10	12.80	10.50	8.20	5.90	3.60	1.30	0
\$125.....	\$130.....	23.00	20.60	18.30	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0
\$130.....	\$135.....	23.80	21.50	19.20	16.90	14.60	12.30	10.00	7.70	5.40	3.10	.80
\$135.....	\$140.....	24.80	22.40	20.10	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70
\$140.....	\$145.....	25.70	23.30	21.00	18.70	16.40	14.10	11.80	9.50	7.20	4.90	2.60
\$145.....	\$150.....	26.60	24.20	21.90	19.60	17.30	15.00	12.70	10.40	8.10	5.80	3.50
\$150.....	\$160.....	27.00	25.60	23.30	21.00	18.70	16.40	14.10	11.70	9.40	7.10	4.80
\$160.....	\$170.....	29.70	27.40	25.10	22.80	20.50	18.20	15.90	13.50	11.20	8.90	6.60
\$170.....	\$180.....	31.50	29.20	26.90	24.60	22.30	20.00	17.70	15.30	13.00	10.70	8.40
\$180.....	\$190.....	33.30	31.00	28.70	26.40	24.10	21.80	19.50	17.10	14.80	12.50	10.20
\$190.....	\$200.....	35.10	32.80	30.50	28.20	25.90	23.60	21.30	18.90	16.60	14.30	12.00
18 percent of the excess over \$200 plus—												
\$200 and over		36.00	33.70	31.40	29.10	26.80	24.50	22.20	19.80	17.50	15.20	12.90

EMPLOYMENT TAXES

"If the pay-roll period with respect to an employee is biweekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
18% of wages		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0.....	\$26.....	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$26.....	\$28.....	\$1.90	.20	0	0	0	0	0	0	0	0	0
\$28.....	\$30.....	5.20	.60	0	0	0	0	0	0	0	0	0
\$30.....	\$32.....	5.60	1.00	0	0	0	0	0	0	0	0	0
\$32.....	\$34.....	5.90	1.30	0	0	0	0	0	0	0	0	0
\$34.....	\$36.....	6.30	1.70	0	0	0	0	0	0	0	0	0
\$36.....	\$38.....	6.70	2.00	0	0	0	0	0	0	0	0	0
\$38.....	\$40.....	7.00	2.40	0	0	0	0	0	0	0	0	0
\$40.....	\$42.....	7.40	2.80	0	0	0	0	0	0	0	0	0
\$42.....	\$44.....	7.70	3.10	0	0	0	0	0	0	0	0	0
\$44.....	\$46.....	8.10	3.50	0	0	0	0	0	0	0	0	0
\$46.....	\$48.....	8.50	3.80	0	0	0	0	0	0	0	0	0
\$48.....	\$50.....	8.80	4.20	0	0	0	0	0	0	0	0	0
\$50.....	\$52.....	9.20	4.60	0	0	0	0	0	0	0	0	0
\$52.....	\$54.....	9.50	4.90	.30	0	0	0	0	0	0	0	0
\$54.....	\$56.....	9.90	5.30	.70	0	0	0	0	0	0	0	0
\$56.....	\$58.....	10.30	5.60	1.00	0	0	0	0	0	0	0	0
\$58.....	\$60.....	10.60	6.00	1.40	0	0	0	0	0	0	0	0
\$60.....	\$62.....	11.00	6.40	1.70	0	0	0	0	0	0	0	0
\$62.....	\$64.....	11.30	6.70	2.10	0	0	0	0	0	0	0	0
\$64.....	\$66.....	11.70	7.10	2.50	0	0	0	0	0	0	0	0
\$66.....	\$68.....	12.10	7.40	2.80	0	0	0	0	0	0	0	0
\$68.....	\$70.....	12.40	7.80	3.20	0	0	0	0	0	0	0	0
\$70.....	\$72.....	12.80	8.20	3.50	0	0	0	0	0	0	0	0
\$72.....	\$74.....	13.10	8.50	3.90	0	0	0	0	0	0	0	0
\$74.....	\$76.....	13.50	8.90	4.30	0	0	0	0	0	0	0	0
\$76.....	\$78.....	13.90	9.20	4.60	0	0	0	0	0	0	0	0
\$78.....	\$80.....	14.20	9.60	5.00	.40	0	0	0	0	0	0	0
\$80.....	\$82.....	14.60	10.00	5.30	.70	0	0	0	0	0	0	0
\$82.....	\$84.....	14.90	10.30	5.70	1.10	0	0	0	0	0	0	0
\$84.....	\$86.....	15.30	10.70	6.10	1.50	0	0	0	0	0	0	0
\$86.....	\$88.....	15.70	11.00	6.40	1.80	0	0	0	0	0	0	0
\$88.....	\$90.....	16.00	11.40	6.80	2.20	0	0	0	0	0	0	0
\$90.....	\$92.....	16.40	11.80	7.10	2.50	0	0	0	0	0	0	0
\$92.....	\$94.....	16.70	12.10	7.50	2.90	0	0	0	0	0	0	0
\$94.....	\$96.....	17.10	12.50	7.90	3.30	0	0	0	0	0	0	0
\$96.....	\$98.....	17.50	12.80	8.20	3.60	0	0	0	0	0	0	0
\$98.....	\$100.....	17.80	13.20	8.60	4.00	0	0	0	0	0	0	0
\$100.....	\$102.....	18.20	13.60	8.90	4.30	0	0	0	0	0	0	0
\$102.....	\$104.....	18.50	13.90	9.30	4.70	.10	0	0	0	0	0	0
\$104.....	\$106.....	18.90	14.30	9.70	5.10	.40	0	0	0	0	0	0
\$106.....	\$108.....	19.30	14.60	10.00	5.40	0	0	0	0	0	0	0
\$108.....	\$110.....	19.60	15.00	10.40	5.80	1.20	0	0	0	0	0	0
\$110.....	\$112.....	20.00	15.40	10.70	6.10	1.50	0	0	0	0	0	0
\$112.....	\$114.....	20.30	15.70	11.10	6.50	1.90	0	0	0	0	0	0
\$114.....	\$116.....	20.70	16.10	11.50	6.90	2.20	0	0	0	0	0	0
\$116.....	\$118.....	21.10	16.40	11.80	7.20	2.60	0	0	0	0	0	0
\$118.....	\$120.....	21.40	16.80	12.20	7.60	3.00	0	0	0	0	0	0
\$120.....	\$124.....	22.00	17.30	12.70	8.10	3.50	0	0	0	0	0	0
\$124.....	\$128.....	22.70	18.10	13.40	8.80	4.20	0	0	0	0	0	0
\$128.....	\$132.....	23.30	18.80	14.20	9.50	4.90	.30	0	0	0	0	0
\$132.....	\$136.....	24.10	19.50	14.90	10.30	5.70	1.00	0	0	0	0	0
\$136.....	\$140.....	24.80	20.20	15.60	11.00	6.40	1.80	0	0	0	0	0
\$140.....	\$144.....	25.60	20.90	16.30	11.70	7.10	2.50	0	0	0	0	0
\$144.....	\$148.....	26.30	21.70	17.00	12.40	7.80	3.20	0	0	0	0	0
\$148.....	\$152.....	27.00	22.40	17.80	13.20	8.50	3.90	0	0	0	0	0
\$152.....	\$156.....	27.70	23.10	18.50	13.90	9.30	4.60	0	0	0	0	0
\$156.....	\$160.....	28.40	23.80	19.20	14.60	10.00	5.40	.70	0	0	0	0
\$160.....	\$164.....	29.20	24.50	19.90	15.30	10.70	6.10	1.50	0	0	0	0
\$164.....	\$168.....	29.90	25.30	20.60	16.00	11.40	6.80	2.20	0	0	0	0
\$168.....	\$172.....	30.60	26.00	21.40	16.80	12.10	7.50	2.90	0	0	0	0
\$172.....	\$176.....	31.30	26.70	22.10	17.50	12.80	8.20	3.60	0	0	0	0
\$176.....	\$180.....	32.00	27.40	22.80	18.20	13.60	9.00	4.30	0	0	0	0
\$180.....	\$184.....	32.80	28.10	23.50	18.90	14.30	9.70	5.10	.50	0	0	0
\$184.....	\$188.....	33.50	28.90	24.20	19.60	15.00	10.40	5.80	1.20	0	0	0
\$188.....	\$192.....	34.20	29.60	25.00	20.40	15.70	11.10	6.50	1.90	0	0	0
\$192.....	\$196.....	34.90	30.30	25.70	21.10	16.50	11.80	7.20	2.60	0	0	0
\$196.....	\$200.....	35.60	31.00	26.40	21.80	17.20	12.60	7.90	3.30	0	0	0
\$200.....	\$210.....	36.90	32.30	27.70	23.10	18.40	13.80	9.20	4.60	0	0	0
\$210.....	\$220.....	38.70	34.10	29.50	24.90	20.20	15.60	11.00	6.40	1.80	0	0
\$220.....	\$230.....	40.50	35.90	31.30	26.70	22.00	17.40	12.80	8.20	3.60	0	0
\$230.....	\$240.....	42.30	37.70	33.10	28.50	23.80	19.20	14.60	10.00	5.40	.80	0
\$240.....	\$250.....	44.10	39.50	34.90	30.30	25.60	21.00	16.40	11.80	7.20	2.60	0
\$250.....	\$260.....	45.90	41.30	36.70	32.10	27.40	22.80	18.20	13.60	9.00	4.40	0
\$260.....	\$270.....	47.70	43.10	38.50	33.90	29.20	24.60	20.00	15.40	10.80	6.20	1.50
\$270.....	\$280.....	49.50	44.90	40.30	35.70	31.00	26.40	21.80	17.20	12.60	8.00	3.30
\$280.....	\$290.....	51.30	46.70	42.10	37.50	32.80	28.20	23.60	19.00	14.40	9.80	5.10
\$290.....	\$300.....	53.10	48.50	43.90	39.30	34.60	30.00	25.40	20.80	16.20	11.60	6.90
\$300.....	\$320.....	55.80	51.20	46.60	42.00	37.30	32.70	28.10	23.50	18.90	14.30	9.60
\$320.....	\$340.....	59.40	54.80	50.20	45.60	40.90	36.30	31.70	27.10	22.50	17.90	13.20
\$340.....	\$360.....	63.00	58.40	53.80	49.20	44.50	39.90	35.30	30.70	26.10	21.50	16.80
\$360.....	\$380.....	66.60	62.00	57.40	52.80	48.10	43.50	38.90	34.30	29.70	25.10	20.40
\$380.....	\$400.....	70.20	65.60	61.00	56.40	51.70	47.10	42.50	37.90	33.30	28.70	24.00
18 percent of the excess over \$400 plus—												
\$400 and over.....		72.00	87.40	62.80		58.20	48.90	44.30	39.70	35.10	30.50	25.90

INCOME TAX AT SOURCE

\$ 1622

"If the pay-roll period with respect to an employee is semimonthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
The amount of tax to be withheld shall be—												
\$0.....	\$28.....	18 % of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$28.....	\$30.....	\$5.20	.20	0	0	0	0	0	0	0	0	0
\$30.....	\$32.....	5.60	.60	0	0	0	0	0	0	0	0	0
\$32.....	\$34.....	5.90	.90	0	0	0	0	0	0	0	0	0
\$34.....	\$36.....	6.30	1.30	0	0	0	0	0	0	0	0	0
\$36.....	\$38.....	6.70	1.70	0	0	0	0	0	0	0	0	0
\$38.....	\$40.....	7.00	2.00	0	0	0	0	0	0	0	0	0
\$40.....	\$42.....	7.40	2.40	0	0	0	0	0	0	0	0	0
\$42.....	\$44.....	7.70	2.70	0	0	0	0	0	0	0	0	0
\$44.....	\$46.....	8.10	3.10	0	0	0	0	0	0	0	0	0
\$46.....	\$48.....	8.50	3.50	0	0	0	0	0	0	0	0	0
\$48.....	\$50.....	8.80	3.80	0	0	0	0	0	0	0	0	0
\$50.....	\$52.....	9.20	4.20	0	0	0	0	0	0	0	0	0
\$52.....	\$54.....	9.50	4.50	0	0	0	0	0	0	0	0	0
\$54.....	\$56.....	9.90	9.90	0	0	0	0	0	0	0	0	0
\$56.....	\$58.....	10.30	5.30	.30	0	0	0	0	0	0	0	0
\$58.....	\$60.....	10.60	5.60	.60	0	0	0	0	0	0	0	0
\$60.....	\$62.....	11.00	6.00	1.00	0	0	0	0	0	0	0	0
\$62.....	\$64.....	11.30	6.30	1.30	0	0	0	0	0	0	0	0
\$64.....	\$66.....	11.70	6.70	1.70	0	0	0	0	0	0	0	0
\$66.....	\$68.....	12.10	7.10	2.10	0	0	0	0	0	0	0	0
\$68.....	\$70.....	12.40	7.40	2.40	0	0	0	0	0	0	0	0
\$70.....	\$72.....	12.80	7.80	2.80	0	0	0	0	0	0	0	0
\$72.....	\$74.....	13.10	8.10	3.10	0	0	0	0	0	0	0	0
\$74.....	\$76.....	13.50	8.50	3.50	0	0	0	0	0	0	0	0
\$76.....	\$78.....	13.90	8.90	3.90	0	0	0	0	0	0	0	0
\$78.....	\$80.....	14.20	9.20	4.20	0	0	0	0	0	0	0	0
\$80.....	\$82.....	14.60	9.60	4.60	0	0	0	0	0	0	0	0
\$82.....	\$84.....	14.90	9.90	4.90	0	0	0	0	0	0	0	0
\$84.....	\$86.....	15.30	10.30	5.30	.30	0	0	0	0	0	0	0
\$86.....	\$88.....	15.70	10.70	5.70	.70	0	0	0	0	0	0	0
\$88.....	\$90.....	16.00	11.00	6.00	1.00	0	0	0	0	0	0	0
\$90.....	\$92.....	16.40	11.40	6.40	1.40	0	0	0	0	0	0	0
\$92.....	\$94.....	16.70	11.70	6.70	1.70	0	0	0	0	0	0	0
\$94.....	\$96.....	17.10	12.10	7.10	2.10	0	0	0	0	0	0	0
\$96.....	\$98.....	17.50	12.50	7.50	2.50	0	0	0	0	0	0	0
\$98.....	\$100.....	17.80	12.80	7.80	2.80	0	0	0	0	0	0	0
\$100.....	\$102.....	18.20	13.20	8.20	3.20	0	0	0	0	0	0	0
\$102.....	\$104.....	18.50	13.50	8.50	3.50	0	0	0	0	0	0	0
\$104.....	\$106.....	18.90	13.90	8.90	3.90	0	0	0	0	0	0	0
\$106.....	\$108.....	19.30	14.30	9.30	4.30	0	0	0	0	0	0	0
\$108.....	\$110.....	19.60	14.60	9.60	4.60	0	0	0	0	0	0	0
\$110.....	\$112.....	20.00	15.00	10.00	5.00	0	0	0	0	0	0	0
\$112.....	\$114.....	20.30	15.30	10.30	5.30	.30	0	0	0	0	0	0
\$114.....	\$116.....	20.70	15.70	10.70	5.70	.70	0	0	0	0	0	0
\$116.....	\$118.....	21.10	16.10	11.10	6.10	1.10	0	0	0	0	0	0
\$118.....	\$120.....	21.40	16.40	11.40	6.40	1.40	0	0	0	0	0	0
\$120.....	\$122.....	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0	0
\$122.....	\$124.....	22.70	17.70	12.70	7.70	2.70	0	0	0	0	0	0
\$124.....	\$126.....	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0	0
\$126.....	\$128.....	24.10	19.10	14.10	9.10	4.10	0	0	0	0	0	0
\$128.....	\$130.....	24.80	19.80	14.80	9.80	4.80	0	0	0	0	0	0
\$130.....	\$132.....	25.60	20.60	15.60	10.60	5.60	.60	0	0	0	0	0
\$132.....	\$134.....	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0	0
\$134.....	\$136.....	26.80	21.80	16.80	11.80	6.80	1.70	0	0	0	0	0
\$136.....	\$138.....	27.40	22.40	17.40	12.40	7.40	2.00	0	0	0	0	0
\$138.....	\$140.....	27.70	22.70	17.70	12.70	7.70	2.70	0	0	0	0	0
\$140.....	\$142.....	28.40	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0
\$142.....	\$144.....	29.10	24.10	19.10	14.10	9.10	4.20	0	0	0	0	0
\$144.....	\$146.....	29.90	24.90	19.90	14.90	9.90	4.80	.60	0	0	0	0
\$146.....	\$148.....	30.60	25.60	20.60	15.60	10.60	5.60	1.00	0	0	0	0
\$148.....	\$150.....	31.30	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0
\$150.....	\$152.....	32.00	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0	0
\$152.....	\$154.....	32.70	27.70	22.70	17.70	12.70	7.70	2.70	0	0	0	0
\$154.....	\$156.....	33.40	28.40	23.40	18.40	13.40	8.40	3.40	0	0	0	0
\$156.....	\$158.....	34.10	29.10	24.10	19.10	14.10	9.10	4.10	0	0	0	0
\$158.....	\$160.....	34.80	29.80	24.80	19.80	14.80	9.80	4.80	0	0	0	0
\$160.....	\$162.....	35.60	30.60	25.60	20.60	15.60	10.60	5.60	.60	0	0	0
\$162.....	\$164.....	36.30	31.30	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0
\$164.....	\$166.....	37.00	32.00	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0
\$166.....	\$168.....	37.70	32.70	27.70	22.70	17.70	12.70	7.70	2.70	0	0	0
\$168.....	\$170.....	38.40	33.40	28.40	23.40	18.40	13.40	8.40	3.40	0	0	0
\$170.....	\$172.....	39.10	34.10	29.10	24.10	19.10	14.10	9.10	4.10	0	0	0
\$172.....	\$174.....	40.00	35.00	30.00	25.00	20.00	15.00	10.00	5.00	.50	0	0
\$174.....	\$176.....	40.50	35.50	30.50	25.50	20.50	15.50	10.50	5.50	1.50	0	0
\$176.....	\$178.....	41.00	36.00	31.00	26.00	21.00	16.00	11.00	6.00	2.00	0	0
\$178.....	\$180.....	42.30	37.30	32.30	27.30	22.30	17.30	12.30	7.30	2.30	0	0
\$180.....	\$182.....	43.60	38.60	33.60	28.60	23.60	18.60	13.60	8.60	3.60	0	0
\$182.....	\$184.....	44.90	39.90	34.90	29.90	24.90	19.90	14.90	9.90	4.90	0	0
\$184.....	\$186.....	46.20	41.20	36.20	31.20	26.20	21.20	16.20	11.20	5.20	0	0
\$186.....	\$188.....	47.50	42.50	37.50	32.50	27.50	22.50	17.50	12.50	6.50	0	0
\$188.....	\$190.....	48.80	43.80	38.80	33.80	28.80	23.80	18.80	13.80	7.80	0	0
\$190.....	\$192.....	50.10	44.10	39.10	34.10	29.10	24.10	19.10	14.10	8.10	0	0
\$192.....	\$194.....	51.40	45.40	40.40	35.40	30.40	25.40	20.40	15.40	9.40	0	0
\$194.....	\$196.....	52.70	46.70	41.70	36.70	31.70	26.70	21.70	16.70	10.70	0	0
\$196.....	\$198.....	54.00	48.00	43.00	38.00	33.00	28.00	23.00	18.00	11.00	0	0
\$198.....	\$200.....	55.30	49.30	44.30	39.30	34.30	29.30	24.30	19.30	12.30	0	0
\$200.....	\$202.....	56.60	50.60	45.60	40.60	35.60	30.60	25.60	20.60	13.60	0	0
\$202.....	\$204.....	57.90	51.90	46.90	41.90	36.90	31.90	26.90	21.90	14.90	0	0
\$204.....	\$206.....	59.20	53.20	48.20	43.20	38.20	33.20	28.20	23.20	15.20	0	0
\$206.....	\$208.....	60.50	54.50	49.50	44.50	39.50	34.50	29.50	24.50	16.50	0	0
\$208.....	\$210.....	61.80	55.80	50.80	45.80	40.80	35.80	30.80	25.80	17.80	0	0
\$210.....	\$212.....	63.10	56.10	51.10	46.10	41.10	36.10	31.10	26.10	18.10	0	0
\$212.....	\$214.....	64.40	57.40	52.40	47.40	42.40	37.40	32.40	27.40	19.40	0	0
\$214.....	\$216.....	65.70	58.70	53.70	48.70	43.70	38.70	33.70	28.70	20.70	0	0
\$216.....	\$218.....	67.00	60.00	55.00	50.00	45.00	40.00	35.00	30.00	21.00	0	0
\$218.....	\$220.....	68.30	61.30	56.30	51.30	46.30	41.30	36.30	31.30	22.30	0	0
\$220.....	\$222.....	69.60	62.60	57.60	52.60	47.60	42.60	37.60	32.60	23.60	0	0
\$222.....	\$224.....	70.90	63.90	58.90	53.90	48.90	43.90	38.90	33.90	24.90	0	0
\$224.....	\$226.....	72.20	65.20	60.20	55.20	50.20	45.20	40.20	35.20	26.20	0	0
\$226.....	\$228.....	73.50	66.50	61.50	56.50	51.50	46.50	41.50	36.50	27.50	0	0
\$228.....	\$230.....	74.80	67.80	62.80	57.80	52.80	47.80	42.80	37.80	28.80	0	0
\$230.....	\$232.....	76.10	69.10	64.10	59.10	54.10	49.10	44.10	39.10	30.10		

§ 1622

EMPLOYMENT TAXES

"If the pay-roll period with respect to an employee is monthly

[illegible]

18 percent of the excess over \$1,000 plus—

\$1,000 and over ..	180.00	170.00	160.00	150.00	140.00	130.00	120.00	110.00	100.00	90.00	80.00
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INCOME TAX AT SOURCE

§ 1622

"If the pay-roll period with respect to an employee is a daily pay-roll period or a miscellaneous pay-roll period

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
\$0.....	\$2.00	18% of wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$2.00...	\$2.25...	\$0.40	.05	0	0	0	0	0	0	0	0	0
\$2.25...	\$2.50...	.45	10	0	0	0	0	0	0	0	0	0
\$2.50...	\$2.75...	.45	15	0	0	0	0	0	0	0	0	0
\$2.75...	\$3.00...	.50	20	0	0	0	0	0	0	0	0	0
\$3.00...	\$3.25...	.55	25	0	0	0	0	0	0	0	0	0
\$3.25...	\$3.50...	.60	30	0	0	0	0	0	0	0	0	0
\$3.50...	\$3.75...	.65	35	0	0	0	0	0	0	0	0	0
\$3.75...	\$4.00...	.70	40	.05	0	0	0	0	0	0	0	0
\$4.00...	\$4.25...	.75	45	10	0	0	0	0	0	0	0	0
\$4.25...	\$4.50...	.80	50	15	0	0	0	0	0	0	0	0
\$4.50...	\$4.75...	.85	55	20	0	0	0	0	0	0	0	0
\$4.75...	\$5.00...	.90	60	25	0	0	0	0	0	0	0	0
\$5.00...	\$5.25...	.95	65	30	0	0	0	0	0	0	0	0
\$5.25...	\$5.50...	1.00	70	35	.05	0	0	0	0	0	0	0
\$5.50...	\$5.75...	1.05	75	40	10	0	0	0	0	0	0	0
\$5.75...	\$6.00...	1.10	80	45	15	0	0	0	0	0	0	0
\$6.00...	\$6.25...	1.15	85	50	20	0	0	0	0	0	0	0
\$6.25...	\$6.50...	1.20	90	55	25	0	0	0	0	0	0	0
\$6.50...	\$6.75...	1.25	95	60	30	0	0	0	0	0	0	0
\$6.75...	\$7.00...	1.30	100	65	35	0	0	0	0	0	0	0
\$7.00...	\$7.25...	1.35	105	70	40	.05	0	0	0	0	0	0
\$7.25...	\$7.50...	1.40	110	75	45	10	0	0	0	0	0	0
\$7.50...	\$7.75...	1.45	115	80	50	15	0	0	0	0	0	0
\$7.75...	\$8.00...	1.50	120	85	55	20	0	0	0	0	0	0
\$8.00...	\$8.25...	1.55	125	90	60	25	0	0	0	0	0	0
\$8.25...	\$8.50...	1.60	130	95	65	30	0	0	0	0	0	0
\$8.50...	\$8.75...	1.65	135	100	70	35	.05	0	0	0	0	0
\$8.75...	\$9.00...	1.70	140	105	75	40	10	0	0	0	0	0
\$9.00...	\$9.25...	1.75	145	110	80	45	15	0	0	0	0	0
\$9.25...	\$9.50...	1.80	150	115	85	50	20	0	0	0	0	0
\$9.50...	\$9.75...	1.85	155	120	90	55	25	0	0	0	0	0
\$9.75...	\$10.00...	1.90	160	125	95	60	30	0	0	0	0	0
\$10.00...	\$10.25...	1.95	165	130	100	65	35	.05	0	0	0	0
\$10.25...	\$10.50...	2.00	170	135	105	70	40	10	0	0	0	0
\$10.50...	\$10.75...	2.05	175	140	110	75	45	15	0	0	0	0
\$10.75...	\$11.00...	2.10	180	145	115	80	50	20	0	0	0	0
\$11.00...	\$11.25...	2.15	185	150	120	85	55	25	0	0	0	0
\$11.25...	\$11.50...	2.20	190	155	125	90	60	30	0	0	0	0
\$11.50...	\$11.75...	2.25	195	160	130	95	65	35	.05	0	0	0
\$11.75...	\$12.00...	2.30	200	165	135	100	70	40	10	0	0	0
\$12.00...	\$12.25...	2.35	205	170	140	105	75	45	15	0	0	0
\$12.25...	\$12.50...	2.40	210	175	145	110	80	50	20	0	0	0
\$12.50...	\$12.75...	2.45	215	180	150	115	85	55	25	0	0	0
\$12.75...	\$13.00...	2.50	220	185	155	120	90	60	30	0	0	0
\$13.00...	\$13.25...	2.55	225	190	160	125	95	65	35	.05	0	0
\$13.25...	\$13.50...	2.60	230	195	165	130	100	70	40	10	0	0
\$13.50...	\$13.75...	2.65	235	200	170	135	105	75	45	15	0	0
\$13.75...	\$14.00...	2.70	240	205	175	140	110	80	50	20	0	0
\$14.00...	\$14.25...	2.75	245	210	180	145	115	85	55	25	0	0
\$14.25...	\$14.50...	2.80	250	215	185	150	120	90	60	30	0	0
\$14.50...	\$14.75...	2.85	255	220	190	155	125	95	65	35	.05	0
\$14.75...	\$15.00...	2.90	260	225	195	160	130	100	70	40	10	0
\$15.00...	\$15.25...	2.95	265	230	200	165	135	105	75	45	15	0
\$15.25...	\$15.50...	3.00	270	235	205	170	140	110	80	50	20	0
\$15.50...	\$15.75...	3.05	275	240	210	175	145	115	85	55	25	0
\$15.75...	\$16.00...	3.10	280	245	215	180	150	120	90	60	30	0
\$16.00...	\$16.25...	3.15	285	250	220	185	155	125	95	65	35	.05
\$16.25...	\$16.50...	3.20	290	255	225	190	160	130	100	70	40	10
\$16.50...	\$16.75...	3.25	295	260	230	195	165	135	105	75	45	15
\$16.75...	\$17.00...	3.30	300	265	235	200	170	140	110	80	50	20
\$17.00...	\$17.25...	3.35	305	270	240	205	175	145	115	85	55	25
\$17.25...	\$17.50...	3.40	310	275	245	210	180	150	120	90	60	30
\$17.50...	\$17.75...	3.45	315	280	250	215	185	155	125	95	65	35
\$17.75...	\$18.00...	3.50	320	285	255	220	190	160	130	100	70	40
\$18.00...	\$18.25...	3.55	325	290	260	225	195	165	135	105	75	45
\$18.25...	\$18.50...	3.60	330	295	265	230	200	170	140	110	80	50
\$18.50...	\$18.75...	3.65	335	300	270	235	205	175	145	115	85	55
\$18.75...	\$19.00...	3.70	340	305	275	240	210	180	150	120	90	60
\$19.00...	\$19.25...	3.75	345	310	280	245	215	185	155	125	95	65
\$19.25...	\$19.50...	3.80	350	315	285	250	220	190	160	130	100	70
\$19.50...	\$19.75...	3.85	355	320	290	255	225	195	165	135	105	75
\$19.75...	\$20.00...	3.90	360	325	295	260	230	200	170	140	110	80
\$20.00...	\$20.25...	3.95	365	330	300	265	235	205	175	145	115	85
\$20.25...	\$20.50...	4.00	370	335	305	270	240	210	180	150	120	90
\$20.50...	\$20.75...	4.05	375	340	310	275	245	215	185	155	125	95
\$20.75...	\$21.00...	4.10	380	345	315	280	250	220	190	160	130	100
\$21.00...	\$21.25...	4.15	385	350	320	285	255	225	195	165	135	105
\$21.25...	\$21.50...	4.20	390	355	325	290	260	230	200	170	140	110
\$21.50...	\$21.75...	4.25	395	360	330	295	265	235	205	175	145	115
\$21.75...	\$22.00...	4.30	400	365	335	300	270	240	210	180	150	120
\$22.00...	\$22.25...	4.35	405	370	340	305	275	245	215	185	155	125
\$22.25...	\$22.50...	4.40	410	375	345	310	280	250	220	190	160	130
\$22.50...	\$22.75...	4.45	415	380	350	315	285	255	225	195	165	135
\$22.75...	\$23.00...	4.50	420	385	355	320	290	260	230	200	170	140
\$23.00...	\$23.25...	4.55	425	390	360	325	295	265	235	205	175	145
\$23.25...	\$23.50...	4.60	430	395	365	330	300	270	240	210	180	150
\$23.50...	\$23.75...	4.65	435	400	370	335	305	275	245	215	185	155
\$23.75...	\$24.00...	4.70	440	405	375	340	310	280	250	220	190	160
\$24.00...	\$24.25...	4.75	445	410	380	345	315	285	255	225	195	165
\$24.25...	\$24.50...	4.80	450	415	385	350	320	290	260	230	200	170
\$24.50...	\$24.75...	4.85	455	420	390	355	325	295	265	235	205	175
\$24.75...	\$25.00...	4.90	460	425	395	360	330	300	270	240	210	180
\$25.00...	\$25.25...	4.95	465	430	400	365	335	305	275	245	215	185
\$25.25...	\$25.50...	5.00	470	435	405	370	340	310	280	250	220	190
\$25.50...	\$25.75...	5.05	475	440	410	375	345	315	285	255	225	195
\$25.75...	\$26.00...	5.10	480	445	415	380	350	320	290	260	230	200
\$26.00...	\$26.25...	5.15	485	450	420	385	355	325	295	265	235	205
\$26.25...	\$26.50...	5.20	490	455	425	390	360	330	300	270	240	210
\$26.50...	\$26.75...	5.25	495	460	430	395	365	335	305	275	245	215
\$26.75...	\$27.00...	5.30	500	465	435	400	370	340	310	280	250	220
\$27.00...	\$27.25...	5.35	505	470	440	405	375	345	315	285	255	225
\$27.25...	\$27.50...	5.40	510	475	445	410	380	350	320	290	260	230
\$27.50...	\$27.75...	5.45	515	480	450	415	385	355	325	295	265	235
\$27.75...	\$28.00...	5.50	520	485	455	420	390	360	330	300	270	240
\$28.00...	\$28.25...	5.55	525	490	460	425	395	365	335	305	275	245
\$28.25...	\$28.50...	5.60	530	495	465	430	400	370	340	310	280	250
\$28.50...	\$28.75...	5.65	535	500	470	435	405	375	345	315	285	255
\$28.75...	\$29.00...	5.70	540	505	475	440	410	380	350	320	290	260
\$29.00...	\$29.25...	5.75	545	510	480	445	415	385	355	325	295	265
\$29.25...	\$29.50...	5.80	550	515	485	450	420	39				

18 percent of the excess over \$30 plus—

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Commissioner, under regulations prescribed by him with the approval of the Secretary, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(d) **Tax paid by recipient.** If the employer, in violation of the provisions of this subchapter, fails to deduct and withhold the tax under this subchapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) **Nondeductibility of tax in computing net income.** The tax deducted and withheld under this subchapter shall not be allowed as a deduction either to the employer or to the recipient of the income in computing net income for the purpose of any tax on income imposed by Act of Congress.

(f) **Refunds or credits.**

(1) **Employers.** Where there has been an overpayment of tax under this subchapter, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld under this subchapter by the employer.

(2) **Employees.** For refund or credit in cases of excessive withholding, see section 322(a).

(g) **Included and excluded wages.** If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than thirty-one consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(h) **Withholding exemptions.**

(1) **In general.** An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) An exemption for himself.

(B) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be

allowable an exemption under section 25(b) (1) (B) (i) (relating to old age) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

(C) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 25(b) (1) (C) (i) (relating to the blind) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

(D) If the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption.

(E) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 25(b) (1) (D) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

(2) Exemption certificates

(A) On Commencement of Employment.—On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of Status, Etc.—If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within ten days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of Status, Etc., Which Affects Next Calendar Year.—If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under Chapter 1 is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Commissioner, with the approval of the Secretary, may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect

(A) First Certificate Furnished.—A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period

ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) **Furnished to Take Place of Existing Certificate.**—A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least thirty days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2) (C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For the purposes of this subparagraph the term "status determination date" means January 1 and July 1 of each year.

(4) **Period during which certificate remains in effect.** A withholding exemption certificate which takes effect under this subsection shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) **Contents of certificate.** Withholding exemption certificates shall be in such form and contain such information as the Commissioner may, with the approval of the Secretary, by regulations prescribe.

(i) **Overlapping pay periods, and so forth.** If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this subchapter shall be determined in accordance with regulations prescribed by the Commissioner with the approval of the Secretary under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(j) **Withholding on basis of average wages.** The Commissioner may, under regulations prescribed by him with the approval of the Secretary, authorize employers (1) to estimate the wages which will be paid to any employee in any quarter of the calendar year, (2) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and (3) to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(k) **Additional withholding.** The Secretary is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in

such form as the Secretary may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this subchapter. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title I, § 137, 58 Stat. 53; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. II, § 22(b-d, f), 58 Stat. 247-253; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 104(a-c), 59 Stat. 561; Apr. 2, 1948, 3:18 p. m., E. S. T., c. 168, Title II, § 202(b) (1), Title V, §§ 501, 502, 62 Stat. 113, 130; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title I, Pt. IV, §§ 141, 142, 64 Stat. 921; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title II, §§ 201-203, 65 Stat. 474.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 201, to insert exception clause at end of section.

Subsec. (c) (1) amended by Act Oct. 20, 1951, § 202, to provide new withholding tables under par. (A) for wages paid after Oct. 31, 1951 and before Jan. 1, 1954, with a new par. (B) containing the former tables for wages paid after Dec. 31, 1953.

Subsec. (k) added by Act Oct. 20, 1951, § 203.

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, § 141, to increase the withholding rate from "15 per centum" to "18 per centum".

Subsec. (c) (1) amended by Act Sept. 23, 1950, § 142, to set up new withholding tables to reflect the tax rate increase.

1948 Amendment. Subsec. (a) amended by Act Apr. 2, 1948, § 501, which provides only one withholding rate of 15 percent instead of the graduated withholding rates.

Subsec. (b) (1) amended by Act Apr. 2, 1948, § 501, which corrects table to comply with the 15 percent withholding rate.

Subsec. (c) (1) amended by Act Apr. 2, 1948, § 502, which corrects the tax tables to reflect the reduction in taxes.

Subsec. (h) (1) amended by Act Apr. 2, 1948, § 202(b) (1), which makes technical amendments made necessary by the additional credits provided by section 25(b) of I.R.C.1939.

1945 Amendment. Subsec. (a) amended by Act Nov. 8, 1945, § 104(a) (1), which struck out par. (1), inserted "17 per centum" in lieu of "18 per centum" in par. (2), inserted "19 per centum" in lieu of "19.8 per centum" in par. (3), and renumbered pars. (2) and (3) as (1) and (2) respectively.

Subsec. (b) (1) amended by Act Nov. 8, 1945, § 104(a) (2), which struck out "18 per centum" in the last column of the table therein and inserted in lieu thereof "17 per centum".

Subsec. (c) (1), the tables relating to wage bracket withholding, amended generally by Act Nov. 8, 1945, § 104(b).

Subsec. (h) (1) (c) amended by Act Nov. 8, 1945, § 104(c), which struck out

"a surtax exemption under section 25(b) (3)" and inserted in lieu thereof "an exemption under section 25(b) (1) (C)".

1944 Amendment. Subsec. (a) amended by Act May 29, 1944, which omitted the 3% provision designed to collect the Victory tax and provided a graduated scale of withholding tax so that a taxpayer whose income is from wages will have the full tax withheld on wages up to \$5000.

Subsec. (b) (1) amended by Act May 29, 1944, which omitted the two tables necessary to prescribe the appropriate exemptions for all pay roll periods for every family status under both the Victory tax and the regular income, and inserted in lieu thereof one short table covering all pay roll periods.

Subsec. (c) (1) amended generally by Act May 29, 1944, which provided for new withholding tables for different pay periods to take into account the repeal of the Victory tax and the revision of both the normal and surtax rates.

Subsec. (h) amended by Act May 29, 1944, which completely revised the provisions relating to withholding exemption certificates.

Subsec. (h) (1) amended by Acts Feb. 25, 1944, and May 29, 1944. Act Feb. 25, 1944 inserted, "if furnished by reason of a change in status occurring on or before July 1, of the calendar year" following "election of the employer". Act May 29, 1944, struck out same phrase.

Effective Date of 1951 Amendment. Section 204 of Act Oct. 20, 1951, provided that the amendments to this section shall be applicable only with respect to wages paid on or after Nov. 1, 1951.

Effective Date of 1950 Amendments. Section 143 of Act Sept. 23, 1950, provided that the amendments of this section should be applicable only with respect to wages paid on or after Oct. 1, 1950.

Effective Date of 1948 Amendments. Section 203 of Act Apr. 2, 1948, provided that amendments made by sections 201 and 202 of said Act Apr. 2, 1948, to sections 23(y), 25(b) (1), (2), 51(a), 58(a), 142(a), 147(a), 163(a) (1), and 1622(h) (1) of I.R.C.1939 should be applicable to taxable years beginning after Dec. 31, 1947, and that taxable years beginning in

1947 and ending in 1948 shall be governed by subsec. (d) of section 108 of I.R.C.1939.

Section 503 of Act Apr. 2, 1948, provided that the amendments of subsecs. (a), (b) (1), and (c) (1) of this section by sections 501 and 502 of said Act Apr. 2, 1948, should be applicable only with respect to wages paid on or after May 1, 1948.

Effective Date of 1945 Amendment. Amendments by Act Nov. 8, 1945, were made applicable only with respect to wages paid on or after Jan. 1, 1946, by section 104(e) thereof.

Effective Date of 1944 Amendment. Amendment of subsecs. (a), (b) (1), and (h) by Act May 29, 1944, § 22(b), (c), (d), respectively, was made applicable only with respect to wages paid on or after Jan. 1, 1945, by section 21 thereof.

Repeal of section 6(c), (d) (4), (d) (5), and (e) (2), and amendment of section 6(d) (2), (d) (3), (d) (6), and (d) (7) of Act June 9, 1943, by Act Feb. 25, 1944, c. 63, Title V, § 506(a, b), 58 Stat. 73, was made applicable to taxable years beginning after Dec. 31, 1942 and before Jan. 1, 1944, by section 506(c) thereof.

Subsec. (f) of Act May 29, 1944, provided that the amendment of subsec. (h) (1) by subsec. (f) should be effective with respect to wages paid during the calendar year 1944.

Amendment of subsec. (h) (1) by Act Feb. 25, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 101 thereof.

Effective Date. Section, prior to May 29, 1944, amendment, as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

New Withholding Exemption Certificates. Subsec. (e) of Act May 29, 1944, § 22, provided:

"(1) **Old certificates made ineffective.** Certificates furnished (whether before or after the enactment of this Act) [May 29, 1944, 7 p. m., E.W.T.] under section 1622(h) of the Internal Revenue Code, without regard to its amendment by this Act [Act May 29, 1944, 7 p. m., E.W.T., c. 210, Part II, § 22, 58 Stat. 247], shall have no effect with respect to withholding to which such section, as amended by this Act, is applicable.

"(2) **Requirement of furnishing new certificate.** On or before December 1, 1944, and on or before the date of commencement of employment if such date occurs after December 1, 1944, and prior to January 1, 1945, each employee receiving wages shall furnish his employer with the withholding exemption certificate, required by section 1622(h) of the Internal Revenue Code (as amended by this Act) in the case of commencement of employment on or after January 1, 1945, and for such purposes the number of withholding exemptions which he is entitled to claim shall be the number which he would be entitled to claim

if the day on which such certificate is so furnished were January 1, 1945.

"(3) **When new certificates take effect.** A certificate furnished under paragraph (2) of this subsection shall take effect with respect to the first payment of wages with respect to which section 1622 of the Internal Revenue Code, as amended by this Act, is applicable. A certificate furnished under section 1622(h) of the Internal Revenue Code, as amended by this Act, after December 1, 1944, and prior to January 1, 1945, and not furnished on or before the date of commencement of employment, shall take effect as provided in section 1622(h) (3) (I) of such Code, as so amended, except that it may not be made effective with respect to any payment of wages to which section 1622 of such Code, as so amended, is not applicable. A certificate furnished under section 1622(h) of such Code, as so amended, to an employer on or after January 1, 1945, and not furnished on or before the date of commencement of employment with such employer, shall take effect as provided in section 1622(h) (3) (B) of such Code, as so amended, if such certificate is the first certificate so furnished and if on December 31, 1944, a certificate was in effect with respect to such employer under section 1622(h) of such Code, without regard to such amendments."

Relief From Double Payments In 1943. Section 6 of Act June 9, 1943, provided:

"(a) **Tax for 1942 Not Greater Than Tax for 1943.**—In case the tax imposed by Chapter 1 of the Internal Revenue Code [1939] upon any individual (other than an estate or trust and other than a nonresident alien not subject to the provisions of sections 58, 59, and 60 of such chapter) for the taxable year 1942 (determined without regard to this section, without regard to interest or additions to the tax, and without regard to credits against the tax for amounts withheld at source) is not greater than the tax for the taxable year 1943 (similarly determined), the liability of such individual for the tax imposed by such chapter for the taxable year 1942 shall be discharged as of September 1, 1943, except that interest and additions to such tax shall be collected at the same time and in the same manner as, and as a part of, the tax under such chapter for the taxable year 1943. In such case if the tax for the taxable year 1942 (determined without regard to this section and without regard to interest or additions to the tax) is more than \$50, the tax under such chapter for the taxable year 1943 shall be increased by an amount equal to 25 percentum of the tax for the taxable year 1942 (so determined) or the excess of such tax (so determined) over \$50, whichever is the lesser. This subsection shall not apply in any case in which the taxpayer is convicted of any criminal offense with respect to the tax for the taxable year 1942 or in which additions to the tax for such taxable year are applicable by reason of fraud.

"(b) Tax for 1942 Greater Than Tax for 1943.—In case the tax imposed by Chapter 1 of the Internal Revenue Code upon any individual (other than an estate or trust and other than a nonresident alien not subject to the provisions of sections 58, 59, and 60 of such chapter) for the taxable year 1942 (determined without regard to this section, without regard to interest or additions to the tax, and without regard to credits against the tax for amounts withheld at source) is greater than the tax for the taxable year 1943 (similarly determined), the liability of such individual for the tax imposed by such chapter for the taxable year 1942 shall be discharged as of September 1, 1943, except that interest and additions to such tax shall be collected at the same time and in the same manner as, and as a part of, the tax under such chapter for the taxable year 1943. In such case the tax under such chapter for the taxable year 1943 shall be increased by—

"(1) the amount by which the tax imposed by such chapter for the taxable year 1942 (determined without regard to this section and without regard to interest and additions to such tax) exceeds the tax imposed by such chapter for the taxable year 1943 (determined without regard to this section, without regard to interest and additions to such tax, and without regard to credits against such tax under section 466(e) or under section 35 of such chapter), plus

"(2) if the tax for the taxable year 1943 (determined without regard to this section, without regard to interest or additions to the tax, and without regard to credits against such tax under section 466(e) or under section 35 of such chapter) is more than \$50, an amount equal to 25 per centum of the tax for the taxable year 1943 (so determined) or the excess of such tax (so determined) over \$50, whichever is the lesser. Such amount shall in no case exceed 25 per centum of the tax for the taxable year 1942 (determined without regard to this section and without regard to interest and additions to such tax) or the excess of such tax (so determined) over \$50, whichever is the lesser.

This subsection shall not apply in any case in which the taxpayer is convicted of any criminal offense with respect to the tax for the taxable year 1942 or in which additions to the tax for such taxable year are applicable by reason of fraud. An individual who becomes subject to tax for the taxable year 1943 under this subsection shall be an individual required to make a return for the taxable year 1943 under section 51 of the Internal Revenue Code.

"(c) Repealed. Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(a), 58 Stat. 73.

"(d) Rules for Application of Subsections (a) and (b).—

"(1) Application of subsection (b) to members of armed forces.—If the taxpayer is in active service in the military or naval forces of the United States or any of the other United Nations at any

time during the taxable year 1942 or 1943, the increase in the tax for the taxable year 1943 under subsection (b) (1) shall be reduced by an amount equal to the amount by which the tax for the taxable year 1942 (determined without regard to this section) is increased by reason of the inclusion in the net income for the taxable year 1942 of the amount of the earned net income (as defined in section 25(a) (4)).

"(2) Joint returns.—If the taxpayer either for the taxable year 1942 or for the taxable year 1943 makes a joint return with his spouse, the taxes of the spouses for the taxable year for which a joint return is not made shall be aggregated for the purposes of subsections (a) and (b), and in case the taxable year for which a joint return is not made is the taxable year 1943, the liability for the increase in the tax for the taxable year 1943 under subsections (a) and (b), shall be joint and several. (As amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(b) (1), 58 Stat. 73.)

"(3) Foreign tax credit and application of Sections 105, 106, and 107.—The credit against the tax imposed by Chapter 1 of the Internal Revenue Code for the taxable year 1943 allowed by section 31 of such chapter (relating to taxes of foreign countries and of possessions of the United States), shall be determined without regard to subsections (a) and (b). Sections 105, 106, and 107 of such chapter (relating to limitations on tax) shall be applied without regard to subsections (a) and (b). (As amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(b) (2), 58 Stat. 73.)

"(4), (5). Repealed. Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(a), 58 Stat. 73.

"(6) Certain portions of increase in 1943 tax not part of estimated tax.—The amount by which the tax for the taxable year 1943 is increased under subsection (a) or (b) (2) shall not be considered to be a part of the tax for such taxable year for the purposes of sections 58, 59, 60, and 294(a) (3), (4), and (5) of the Internal Revenue Code. (As amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(b) (3), 58 Stat. 73.)

"(7) Taxpayer dying in taxable year 1942.—If the individual dies during the taxable year 1942, subsections (a) and (b) shall not apply. (As amended Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(b) (2), 58 Stat. 73.)

"(e) Extension of time for payment of portions of increase in 1943 tax.—

"(1) Twenty-five per centum increase under subsection (a) or (b).—At the election of the taxpayer, made under regulations prescribed by the Commissioner with the approval of the Secretary, the Commissioner shall, except as hereinafter provided, extend the time for the payment of the portion of the tax for the taxable year 1943 equal to one-half of the amount of the 25 per centum increase therein under subsection (a) or (b) (2) for the taxable year 1943, in which case such portion shall be paid on or before the fifteenth day of the fifteenth month

following the close of the taxable year. The Commissioner may condition the extension upon the furnishing by the taxpayer of a bond in such amount, not exceeding the amount with respect to which the extension applies, with such surety or sureties, as the Commissioner deems necessary, conditioned upon the payment of such amount in accordance with the terms of the extension. If such amount is not paid on or before the date on which it is payable, it shall be paid upon notice and demand from the Collector. If such amount is not paid on or before the date on which it is payable, there shall be collected, as a part of the tax, interest on such amount at the rate of 6 per centum per annum for the period beginning with the date on which such amount is payable and ending with the date on which it is paid.

"(2). Repealed. Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, § 506(a), 58 Stat. 73.

"(f) Treatment of payments on account of 1942 tax.—Any payment (other than interest and additions to the tax) made on account of the tax imposed by Chapter 1 of the Internal Revenue Code [1939] for the taxable year 1942 upon a taxpayer whose liability for such tax is discharged under subsection (a) or (b) shall be considered as payment on account of the estimated tax for the taxable year 1943. In the case of any extension of time for the payment of such tax granted by the Commissioner prior to September 1, 1943, payment of the portion thereof which if such extension had not been granted would have been payable under section 56(b) prior to such date shall be made notwithstanding subsection (a) or (b), but the foregoing provisions of this subsection shall apply to any such payment. In case the taxpayer becomes delinquent, prior to September 1, 1943, in the payment of such tax or any installment thereof, subsection (a) or (b) shall not relieve the taxpayer of his liability for the tax, but the foregoing provisions of this subsection shall be applicable to payment of such liability. If any payment on account of the tax imposed by such chapter for the taxable year 1942 is made pursuant to a joint return made by husband and wife for such taxable year, and such payment is considered as a payment on account of the estimated tax for the taxable year 1943, such payment may be treated as a payment on account of the estimated tax of either

the husband or the wife for such taxable year or may be divided between them.

"(g) Use of term 'taxable year'.—For the purposes of this section the terms 'taxable year 1937', 'taxable year 1938', 'taxable year 1939', 'taxable year 1940', 'taxable year 1942', and 'taxable year 1943' mean, respectively, the taxable year beginning in 1937, 1938, 1939, 1940, 1942, and 1943, respectively; and 'taxable year' as applied to the taxable year 1942 or 1943 shall not include any period of less than twelve months unless occasioned by the death of the taxpayer or unless there is no taxable year of twelve months beginning in such calendar year.

"(h) Regulations.—This section shall be applied in accordance with regulations prescribed by the Commissioner with the approval of the Secretary."

Status Determination Date. Section 202 (b) (2) of Act Apr. 2, 1948, provided: "In the case of an individual entitled to an additional withholding exemption under section 1622(h) (1) of the Internal Revenue Code [subsec. (h) (1) of this section] by reason of the amendment made thereto by paragraph (1) of this subsection, the term 'status determination date' as used in section 1622(h) (3) (B) [subsec. (h) (3) (B) of this section] of such Code includes also the ninetieth day after the date of the enactment of this Act [8:18 p. m. E.S.T. Apr. 2, 1948]."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts."

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Apr. 2, 1948, 1948 U.S. Code Cong. Service, p. 1163; Nov. 8, 1945, 1945 U.S. Code Cong. Service, p. 814; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 1623. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this subchapter, and shall not be liable to any person for the amount of any such payment. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126.

Historical Note

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

§ 1624. Return and payment by governmental employer

If the employer is the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, Territory, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126.

Historical Note

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

§ 1625. Receipts

(a) **Requirement.** Every employer required to deduct and withhold a tax in respect of the wages of an employee, or who would have been so required if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of his employment during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the wages paid by the employer to such employee during such calendar year, and the amount of the tax deducted and withheld under this subchapter in respect of such wages. In the case of compensation paid for service as a member of the armed forces, the statement shall show, as wages paid during the calendar year, the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 1621(a)); such statement to be furnished if any tax was withheld during the calendar year or if any of the compensation paid is includible under chapter 1 in gross income.

(b) **Statements to constitute information returns.** The statements required to be furnished by this section in respect of any wages shall be furnished at such other times, shall contain such other information, and shall be in such form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. A duplicate of such statement if made and filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary shall constitute the return required to be made in respect of such wages under section 147.

(c) **Extension of time.** The Commissioner, under such regulations as he may prescribe with the approval of the Secretary, may grant to any employer a reasonable extension of time (not in excess of thirty days) with respect to the statements required to be furnished under this section.

(d) **Application of section.** This section shall apply only with respect to wages paid before January 1, 1951. For corresponding provisions with respect to wages paid after December 31, 1950, see section 1633. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126, amended Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 104(d) (1), 59 Stat. 567; Aug. 28, 1950, c. 809, Title II, § 206(b) (3), 64 Stat. 538; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 202(c), 64 Stat. 927.

Historical Note

1950 Amendments. Subsec. (a) amended by Act Sept. 23, 1950, which added last sentence requiring a statement to be furnished if any tax was withheld during

the taxable year or if (even though no tax was withheld) any taxable compensation was paid during the taxable year.

Subsec. (d) added by Act Aug. 28, 1950

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1945 Amendment. Subsec. (a) amended by Act Nov. 8, 1945, which inserted after "required to deduct and withhold a tax in respect of the wages of an employee" the following: ", or who would have been so required if the employee had claimed no more than one withholding exemption,".

Effective Date of 1950 Amendment. Addition of subsec. (d) as applicable only with respect to wages paid after Dec. 31, 1950, see note set out under section 1633 of I.R.C.1939.

Effective Date of 1945 Amendment. Amendment to subsec. (a) by Act Nov. 8, 1945, was made applicable only with respect to wages paid on or after Jan. 1, 1946, by section 104(e) thereof.

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong Service, p. 3053. See, also, Act Nov. 8, 1945, 1945 U.S.Code Cong.Serv.ice, p. 814.

§ 1626. Penalties

(a) **Penalties for fraudulent statement or failure to furnish statement.** In lieu of any other penalty provided by law (except the penalty provided by subsection (b) of this section), any person required under the provisions of section 1625 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1625, or regulations prescribed thereunder, shall for each such failure, upon conviction thereof be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(b) **Additional penalty.** In addition to the penalty provided by subsection (a) of this section, any person required under the provisions of section 1625 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1625, or regulations prescribed thereunder, shall for each such failure be subject to a civil penalty of not more than \$50.

(c) **Repealed.** Aug. 27, 1949, c. 517, § 6, 63 Stat. 668

(d) **Penalties in respect of withholding exemption certificates.** Any individual required to supply information to his employer under section 1622(h) who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 1622, shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than \$500, or imprisoned for not more than one year, or both. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126, amended Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 104(d) (2), 59 Stat. 568; Aug. 27, 1949, c. 517, § 6, 63 Stat. 668.

Historical Note

1949 Amendment. Subsec. (c) relating to failure of employer to file return or pay tax, repealed by Act Aug. 27, 1949.

1945 Amendment. Subsecs. (a) and (b) amended by Act Nov. 8, 1945, which struck out "in respect of tax withheld pursuant to this subchapter" in each of such subsections, and struck out "receipt" wherever appearing therein and inserted in lieu thereof "statement".

Effective Date of 1945 Amendment. Amendments to subsecs. (a) and (b) by

Act Nov. 8, 1945, were made applicable only with respect to wages paid on or after Jan. 1, 1946, by section 104(e) thereof.

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1627. Other laws applicable

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1400 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax under this subchapter. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126.

Historical Note

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

SUBCHAPTER E.—GENERAL PROVISIONS**Historical Note**

Subchapter added by Act June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126.

Effective Date. Effective date of subchapter, see note preceding section 1621 of I.R.C.1939.

§ 1630. Repealed. Aug. 27, 1949, c. 517, § 4(b), 63 Stat. 668**Historical Note**

Effective Date. The repeal of section as applicable with respect to any return, statement, or document filed after Aug. 27, 1949, see note set out under section 8309 of I.R.C.1939.

Section, added June 9, 1943, 7 p. m., E.W.T., c. 120, § 2(a), 57 Stat. 126, related to verification of returns.

§ 1631. Failure of employer to file returns

In case of a failure to make and file any return required under this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than \$5. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126, amended Aug. 27, 1949, c. 517, § 6, 63 Stat. 668; Aug. 28, 1950, c. 809, Title II, § 209(d) (1), 64 Stat. 547.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section to omit provision relating to failure to pay the tax required by this chapter.

1949 Amendment. Act Aug. 27, 1949, amended section generally to make a minimum addition to the tax of \$5 for each failure to file return or pay the tax.

Effective Date of 1950 Amendment. Section 209(d) (2) of Act Aug. 28, 1950, provided that this section should be applicable only with respect to returns filed after Dec. 31, 1950.

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S.Code Cong Service, p. 1876.

§ 1632. Acts to be performed by agents

In case a fiduciary, agent or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Commissioner, under regulations prescribed by him with the approval of the Secretary, is authorized to designate such fiduciary, agent or other person to perform such acts as are required of employers under this chapter and as the Commissioner may specify. Except as may be otherwise prescribed by the Commissioner with the approval of the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be ap-

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plicable to a fiduciary, agent or other person so designated but, except as so provided, the employer for whom such fiduciary, agent or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers. Added June 9, 1943, 7 p. m., E. W. T., c. 120, § 2(a), 57 Stat. 126.

Historical Note

Effective Date. Section as effective July 1, 1943, see note preceding section 1621 of I.R.C.1939.

§ 1633. Receipts for employees

(a) **Requirement.** Every person required to deduct and withhold from an employee a tax under section 1400 or 1622, or who would have been required to deduct and withhold a tax under section 1622 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following: (1) the name of such person, (2) the name of the employee (and his social security account number if wages as defined in section 1426(a) have been paid), (3) the total amount of wages as defined in section 1621(a), (4) the total amount deducted and withheld as tax under section 1622, (5) the total amount of wages as defined in section 1426(a), and (6) the total amount deducted and withheld as tax under section 1400. In the case of compensation paid for service as a member of the armed forces, the statement shall show, as wages paid during the calendar year, the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 1621(a)); such statement to be furnished if any tax was withheld during the calendar year or if any of the compensation paid is includible under chapter 1 in gross income.

(b) **Statements to constitute information returns.** The statements required to be furnished by this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. A duplicate of any such statement if made and filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary shall constitute the return required to be made in respect of such remuneration under section 147.

(c) **Extension of time.** The Commissioner, under such regulations as he may prescribe with the approval of the Secretary, may grant to any person a reasonable extension of time (not in excess of thirty days) with respect to the statements required to be furnished under this section. Added Aug. 28, 1950, c. 809, Title II, § 206(a), 64 Stat. 537, amended Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 202(c), 64 Stat. 927.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, which added last sentence requiring a statement to be furnished if any tax was withheld during the taxable year or if (even though no tax was withheld) any taxable compensation was paid during the taxable year.

Effective Date of 1950 Amendment. Section 206(c) of Act Aug. 28, 1950, provided that: "The amendments made by

this section [addition of sections 1633 and 1634 of I.R.C.1939 and amendment of sections 1403(a) and 1625(a) of I.R.C. 1939] shall be applicable only with respect to wages paid after December 31, 1950, except that the amendment made by subsection (b) (1) of this section [amendment of section 322(a) of I.R.C.1939] shall be applicable only with respect to taxable years beginning after December 31, 1950,

and only with respect to 'special refunds' in the case of wages paid after December 31, 1950."

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053. See, also, Act Aug. 23, 1950, 1950 U.S. Code Cong. Service p. 3237.

§ 1634. Penalties

(a) **Penalties for fraudulent statement of failure to furnish statement.** In lieu of any other penalty provided by law (except the penalty provided by subsection (b) of this section), any person required under the provisions of section 1633 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1633, or regulations prescribed thereunder, shall for each such failure, upon conviction thereof, be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(b) **Additional penalty.** In addition to the penalty provided by subsection (a) of this section, any person required under the provisions of section 1633 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1633, or regulations prescribed thereunder, shall for each such failure be subject to a civil penalty of \$50. Such penalty shall be assessed and collected in the same manner as the tax imposed by section 1410. Added Aug. 28, 1950, c. 809, Title II, § 206(a), 64 Stat. 537.

§ 1635. Period of limitation upon assessment and collection of certain employment taxes

(a) **General rule.** The amount of any tax imposed by subchapter A of this chapter or subchapter D of this chapter shall (except as otherwise provided in the following subsections of this section) be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) **False return or no return.** In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) **Willful attempt to evade tax.** In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) **Collection after assessment.** Where the assessment of any tax imposed by subchapter A of this chapter or subchapter D of this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(e) **Date of filing of return.** For the purposes of this section, if a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, such return shall be considered filed on March 15 of such succeeding calendar year.

(f) **Application of section.** The provisions of this section shall apply only to those taxes imposed by subchapter A of this chapter, or subchap-

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ter D of this chapter, which are required to be collected and paid by making and filing returns.

(g) **Effective date.** The provisions of this section shall not apply to any tax imposed with respect to remuneration paid during any calendar year before 1951. Added Aug. 28, 1950, c. 809, Title II, § 207(a), 64 Stat. 538.

§ 1636. Period of limitation upon refunds and credits of certain employment taxes

(a) **General rule.** In the case of any tax imposed by subchapter A of this chapter or subchapter D of this chapter—

(1) **Period of limitation.** Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **Limit on amount of credit or refund.** The amount of the credit or refund shall not exceed the portion of the tax paid—

(A) If a return was filed, and the claim was filed within three years from the time the return was filed, during the three years immediately preceding the filing of the claim.

(B) If a claim was filed, and (i) no return was filed, or (ii) if the claim was not filed within three years from the time the return was filed, during the two years immediately preceding the filing of the claim.

(C) If no claim was filed and the allowance of credit or refund is made within three years from the time the return was filed, during the three years immediately preceding the allowance of the credit or refund.

(D) If no claim was filed, and (i) no return was filed or (ii) the allowance of the credit or refund is not made within three years from the time the return was filed, during the two years immediately preceding the allowance of the credit or refund.

(b) **Penalties, etc.** The provisions of subsection (a) of this section shall apply to any penalty or sum assessed or collected with respect to the tax imposed by subchapter A of this chapter or subchapter D of this chapter.

(c) **Date of filing return and date of payment of tax.** For the purposes of this section—

(1) If a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, such return shall be considered filed on March 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before March 15 of the succeeding calendar year, such tax shall be considered paid on March 15 of such succeeding calendar year.

(d) **Application of section.** The provisions of this section shall apply only to those taxes imposed by subchapter A of this chapter, or subchapter D of this chapter, which are required to be collected and paid by making and filing returns.

(e) **Effective date.** The provisions of this section shall not apply to any tax paid or collected with respect to remuneration paid during any calendar year before 1951 or to any penalty or sum paid or collected with respect to such tax. Added Aug. 28, 1950, c. 809, Title II, § 207(a), 64 Stat. 538.

CHAPTER 9A.—WAR TAXES AND WAR TAX RATES

Sec.

- 1650. War tax rates of certain miscellaneous taxes.
- 1651. Retailers' excise tax on luggage, etc.
- 1652. Leases, conditional sales, existing contracts, etc.
- 1653. Articles classifiable under more than one section.
- 1654, 1655. Repealed.
- 1656. Floor stocks refunds on distilled spirits, wines, and cordials, and fermented malt liquors.
- 1657. Floor stocks refunds on electric light bulbs.
- 1658. Repealed.
- 1659. Definition of "rate reduction date".

Historical Note

Chapter heading added by Act June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title II, § 210, 54 Stat. 522, and amended by Act Feb. 25, 1944, 12:49 p. m., E.W.T., c. 63, Title III, § 302(a), 58 Stat. 61.

§ 1650. War tax rates of certain miscellaneous taxes

In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period beginning with the effective date of title III of the Revenue Act of 1943 and ending March 31, 1954, shall be the rates set forth under the heading "War Tax Rate":

Section	Description of Tax	Old Rate	War Tax Rate
1700 (a)	Admissions	1 cent for each 10 cents or fraction thereof.	1 cent for each 5 cents or major fraction thereof.
1700 (b)	Permanent Use or Lease of Boxes or Seats.	11 per centum	20 per centum.
1700 (c)	Sales of Tickets Outside Box Office.	11 per centum	20 per centum.
1700 (e)	Cabarets, Roof Gardens, Etc.	5 per centum	20 per centum.
1710 (a) (1)	Dues or Membership Fees.	11 per centum	20 per centum.
1710 (a) (2)	Initiation Fees	11 per centum	20 per centum.
2400 (except as respects watches selling at retail for not more than \$65 and alarm clocks selling at retail for not more than \$5).	Jewelry	10 per centum	20 per centum.
2401	Furs	10 per centum	20 per centum.
2402	Toilet Preparations ...	10 per centum	20 per centum.
3268	Billiard and Pool Tables; and Bowling Alleys.	\$10 per year per table; \$10 per year per alley.	\$20 per year per table; \$20 per year per alley.
3406 (a) (10)	Electric Light Bulbs and Tubes	5 per centum	20 per centum.
3465 (a) (1) (A)	Telephone, Long Distance.	20 per centum	25 per centum.
3465 (a) (2) (A)	Leased Wires, Etc.	15 per centum	25 per centum.
3465 (a) (2) (B)	Wire and Equipment Service.	5 per centum	8 per centum.
3465 (a) (3)	Local Telephone Service	10 per centum	15 per centum.
3469 (a)	Transportation of Persons.	10 per centum	15 per centum.
3469 (c)	Seats, Berths, Etc.	10 per centum	15 per centum.

Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 210, 54 Stat. 522, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61; June 9, 1944, c. 240, § 3, 58 Stat. 273; Mar. 11, 1947, c. 17, § 2, 61 Stat. 12; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 455, 491(a), 65 Stat. 527, 538; Mar. 31, 1954, c. 126, Title V, § 504(a), 68 Stat. 42.

Historical Note

1954 Amendment. Act Mar. 31, 1954, inserted "and ending March 31, 1954" after "Revenue Act of 1943" in opening par., and thus terminated the war tax rates provided for in this section.

1951 Amendment. Act Oct. 20, 1951, § 455, amended section by striking from the table the references to sections 2800 (a) (1), 2800(a) (3), 3030(a) (1), 3030(a) (2) and 3150 of I.R.C.1939, in first column thereof, and the corresponding data in the other three columns thereof with respect to distilled spirits, imported perfumes containing distilled spirits, still wines, sparkling wines, liqueurs and cordials, and fermented malt liquors.

Act Oct. 20, 1951, § 491(a), amended section by striking from the table the reference to section "3465(a) (1) (B) (insofar as it relates to domestic telegraph, cable, and radio dispatches)" in the first column, and the data related thereto as follows: "Domestic Telegraph, Cable, or Radio Dispatches" in second column, "15 per centum" in third column, and "25 per centum" in fourth column.

1947 Amendment. Act Mar. 11, 1947, amended section by omitting phrase "and ending on the first day of the first month which begins six months or more after the date of termination of hostilities in the present war" thus continuing in effect the war excise tax rates.

1944 Amendment. Act June 9, 1944, amended section by striking out "30 per centum" where it appears in the table as the war tax on cabarets, roof gardens, etc., and inserting in lieu thereof "20 per centum".

Act Feb. 25, 1944, amended section generally by raising rates and naming it "War Tax Rate" instead of "Defense-Tax Rate".

Effective Date of 1954 Amendment. Effective date of amendment of this section by Act Mar. 31, 1954, in so far as it affects certain rates, see note under section 1651 of I.R.C.1939.

Effective Date of 1951 Amendments. Section 456 of Act Oct. 20, 1951 provided that the amendments made by sections 451, 452(a), 453, 454 and 455 of that Act to this section and sections 1656, 2800, 3030 and 3150 of I.R.C.1939, and the amendment made by section 452(b) of such Act to subchapter F of chapter 26 of I.R.C.1939, adding section 3195 thereto, should take effect on the first day of the first month which begins more than 10 days after the date of the enactment of such Act (Oct. 20, 1951).

Section 491(b) of Act Oct. 20, 1951 provided that, subject to subsec. (c) of such section 491, the amendment made by subsec. (a) thereof to this section should apply with respect to amounts paid on or after the rate reduction date, as defined in subsec. (d) of such section 491, for services rendered on or after such date. Subsecs. (c) and (d) of said section 491, referred to, are set out in notes under this section.

Effective Date of 1944 Amendment. Subsec. (b) of section 3 of Act June 9, 1944, provided: "The amendment made by subsection (a) shall be applicable only with respect to the period beginning at 10 antemeridian on the first day of the first month following the date of enactment of this Act."

Amendment by Act Feb. 25, 1944, was made effective on the first day of the first month which begins more than 10 days after the date of the enactment of this Act by section 301 thereof.

Short Title. Congress in enacting Act Mar. 11, 1947, which amended sections 1650, 1654, 1655, 1659, 1806, 2401, and 3469, (a) of I.R.C.1939, provided by section 1 of said Act March 11, 1947, that it should be popularly known as the "Excise Tax Act of 1947".

Change in, or Restoration of Permanent Rates. Other sections of Act Mar. 31, 1954, referred to in 1954 amendment note above, amended sections 1700(a) (b) (c) (e), 1710(a) (1) (2), 3268 and 3406(a) (10) of I.R.C.1939, cited in the tax rate table set out in this section, to make changes in the permanent taxes and rates provided for in those sections. The failure of such Act to amend sections 2400, 2401, 2402, 3465(a) (3) and 3469(a) (c) of I.R.C.1939, also cited in the tax rate table set out in this section, resulted, considering the termination by such Act of the war taxes and rates provided for in such table, on March 31, 1954 (see 1954 amendment note above), in the restoration of the permanent rates provided for in those sections.

Particular Increases; Effective and Termination Dates. Section 302(b) (2) of Act Feb. 25, 1944, as amended by section 5 of Act Mar. 11, 1947, provided:

"(1) **Cabaret tax.** The increase made by subsection (a) of this section in the tax imposed by section 1700(e) of the Internal Revenue Code [1939] shall be applicable only with respect to the period beginning at 10:00 A. M. on the first day of the first month which begins more than ten days after the date of the enactment of this Act.

"(2) Billiard and pool tables and bowling alleys. The increase made by subsection (a) of this section in the tax imposed by section 3268 of the Internal Revenue Code [1939] shall be effective with respect to the period beginning July 1, 1944.

"(3) Telegraph, telephone, radio, and cable facilities. The increases made by subsection (a) of this section in the taxes imposed by section 3465(a) (1) of the Internal Revenue Code [1939] shall apply only to amounts paid for services rendered on or after the effective date of this title. The increases made by subsection (a) in the taxes imposed by section 3465(a) (2) and (3) of the Internal Revenue Code [1939] shall apply only to amounts paid pursuant to bills rendered on or after the first day of the first month beginning after the effective date of this title [I.R.C.1939] for services for which no previous bill was rendered. Where bills rendered on or after such first day include charges for services previously rendered, such increased rates shall not apply to such services as were rendered more than two months before such first day, and the provisions of section 3465 in effect at the time such prior services were rendered shall be applicable to the amounts paid for such services."

Amounts Paid Pursuant to Bills Rendered. Section 491(c) of Act Oct. 20, 1951 provided that: "The amendments made by this section [to this section] shall not apply with respect to amounts paid pursuant to bills rendered prior to the rate reduction date. In the case of amounts paid pursuant to bills rendered on or after the rate reduction date for services for which no previous bill was rendered, the amendments made by this section shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of sections 1650 and 3465 of the Internal Revenue Code [this section and section 3465 of I.R.C.1939] in effect at the time such services were rendered shall be applicable to the amounts paid for such services"

Definition of "Rate Reduction Date". Section 491(d) of Act Oct. 20, 1951, provided that: "For the purposes of this section [section 491 of such Act, part of which amended this section, and the remainder of which is set out in notes under this section] the term 'rate reduction date' means the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Oct. 20, 1951]".

Termination of Rates. Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 521(b), 536, 550(a), (b), 55 Stat. 708, 710, 715, provided for the termination of the applicability of the rates specified in subsec. (a) of this section as follows:

"[§ 521.] (b) The rates specified in subsection (a) [of Act Sept. 20, 1941, § 521, affecting sections 1700, 1801, 1802, 1804, 1806, 2000, 2700, 3150, 3250, 3407, 3411, 3412, 3413, 3460, 3481, and 3482 of this title] shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a), section 2004, and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period."

"[§ 536.] The amendments made by this Part [Act Sept. 20, 1941, Title V, Part III, §§ 531-536, affecting sections 1807, 1850, 2800, 2887, 3030, 3192, and 3400 of I.R.C.1939] shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

"[§ 550.] (a) The amendments made by this Part [Act Sept. 20, 1941, Title V, Part IV, §§ 541-550, affecting I.R.C.1939, §§ 1700, 1701, 1710, 1712, 1715, 1716, 3403, 3404, 3405, 3409, 3441, 3465, 3466; and Title 16, Conservation, §§ 18e, 407d] shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

"[§ 550.] (b) Despite the provisions of subsection (a), the tax imposed by section 1700(e) of the Internal Revenue Code [1939], as amended by section 542 of this Act (relating to cabaret, etc., tax), shall be applicable only with respect to the period beginning at 10 a. m. on October 1, 1941, and the tax imposed by such subsection as in force prior to its amendment by section 542 of this Act, as modified by section 1650(a) of the Internal Revenue Code [1939], shall be applicable with respect to the period before 10 a. m. on such date."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Acts Oct. 20, 1951, see 1951 U.S. Code Cong.Service, p. 1781; Act Mar. 11, 1947, 1947 U.S.Code Cong.Service, p. 965.

§ 1651. Retailers' excise tax on luggage, etc.

(a) **Tax.** There is hereby imposed upon the following articles (including in each case fittings or accessories therefor sold on or in connection with the sale thereof) sold at retail a tax equivalent to 10 per centum of the price for which so sold:

(1) Trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesmen's sample and display cases.

(2) Purses, handbags, pocketbooks, wallets, billfolds, and card, pass, and key cases.

(3) Toilet cases and other cases, bags, and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel.

(b) **Other laws applicable.** All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 19 shall be applicable in respect of the tax imposed by subsection (a). Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61, amended Mar. 31, 1954, c. 126, Title I, § 101, 68 Stat. 37.

Historical Note

1954 Amendment. Subsec. (a), opening par., amended by Act Mar. 31, 1954, which substituted "10 per centum" for "20 per centum".

Effective Dates of 1954 Amendment. Section 505 of Act Mar. 31, 1954, provided as follows:

"(a) The amendments made by title I, title III, and section 502 [to sections 1651 (a), 2700(a), 3405, opening par., 3406(a) (1) (3) (4) (10), 3408(a), 3409(a), 3413, and 3416 (added) of I.R.C.1939] and the amendment made by section 504(a) [to section 1650 of I.R.C.1939] insofar as it affects the rates of the retailers' excise taxes imposed by sections 2400, 2401, and 2402 of the Internal Revenue Code [sections 2400, 2401, and 2402 of I.R.C.1939] and the rate of the manufacturers' excise tax imposed by section 3406(a) (10) of such Code [section 3406(a) (10) of I.R.C. 1939], shall apply only with respect to articles sold on or after April 1, 1954. For the purposes of the preceding sentence, an article shall not be considered sold before April 1, 1954, unless possession or right to possession passes to the purchaser before such date. In the case of—

"(1) a lease,

"(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments.

"(3) a conditional sale, or

"(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

entered into before April 1, 1954, payments made on or after April 1, 1954, shall, for purposes of this subsection, be considered as payments made with re-

spect to articles sold on or after April 1, 1954.

"(b) The amendment made by section 501 [to section 1850(a) of I.R.C.1939] shall apply only with respect to amounts paid on or after April 1, 1954.

"(c) The amendment made by section 504(a) [to section 1650 of I.R.C.1939] shall apply—

"(1) insofar as it affects the rate of the tax imposed by section 1700(a) (1) of the Internal Revenue Code [section 1700(a) (1) of I.R.C.1939], with respect to amounts paid for admissions on or after April 1, 1954, but, in the case of any season ticket or subscription, only if all the admissions under such ticket or subscription can occur only on or after April 1, 1954;

"(2) insofar as it affects the rates of the taxes imposed by subsections (b), (c), and (e) of section 1700 of the Internal Revenue Code [section 1700 of I.R.C.1939], as though the rates listed under the heading 'Old Rate' in the table in section 1650 of such Code [section 1650 of I.R.C.1939] were the rates established by the amendments made by title II of this Act [to section 1700(b) (c) (e) of I.R.C.1939];

"(3) insofar as it affects the rates of the taxes imposed by subsections (a) (1) (A), (a) (2) (A), and (a) (2) (B) of section 3465 of the Internal Revenue Code [section 3465 of I.R.C. 1939], as though the rates listed under the heading 'Old Rate' in the table in section 1650 of such Code [section 1650 of I.R.C.1939] were the rates established by the amendments made by section 401 of this Act [to section 3465(a) (1) (A) (B), (a) (2) (A) (B) of I.R.C.1939];

"(4) insofar as it affects the rate

of the tax imposed by section 3465 (a) (3) of the Internal Revenue Code [section 3465(a) (3) of I.R.C.1939], as though such amendment were an amendment made by section 401 of this Act [to section 3465(a) (1) (A) (B), (a) (2) (A) (B) of I.R.C.1939]; and

"(5) insofar as it affects the rates of the taxes imposed by section 3469 of the Internal Revenue Code [section 3469 of I.R.C.1939], with respect to amounts paid for or in connection with transportation which begins on or after April 1, 1954."

Effective Date. Section was made effective on the first day of the first month which begins more than 10 days after the date of the enactment of this Act by section 301 of Act Feb. 25, 1944.

Short Title. Congress, in enacting Act March 31, 1954, which amended sections 1650, 1651(a), 1656(a) (b), 1657(a), 1659, 1700(b) (1), (c) (1), (e) (1), 1701(a) (2), (e) (2), 1701(f) (added), 1710(a) (1) (2), 1850(a), 2000(c) (2), (g) (1) (2), 2450,

2452(a), 2453, 2456 (added), 2700(a), 2800 (a) (1) (3), 3030(a) (1) (A), (a) (2), 3150 (a), 3250(2) (5) (C), 3268(a), 3403(a) (b) (c), 3403(f) (added), 3405 (opening par.), 3406(a) (1) (3) (4) (10), 3408(a), 3409(a), 3412(a), (c) (2), (g) (1) (2), 3413, 3416 (added), 3443(a) (3) (A), 3465(a) (1) (A) (B), and 3465(a) (2) (A) (B) of I.R.C. 1939, amended chapter heading of chapter 20 of I.R.C.1939, and enacted provisions set out as notes under sections 1651, 1700, 2000, 3443, and 3465 of I.R.C.1939, and preceding section 2450 of I.R.C.1939, provided by section 1(a) of such Act that it should be popularly known as the "Excise Tax Reduction Act of 1954".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

§ 1652. Leases, conditional sales, existing contracts, etc.

(a) Cases where rate of tax increased. In the application of section 2405 or 3441(c) to the articles with respect to which the rate of tax is increased by this chapter, where the lease, contract of sale, conditional sale, or chattel mortgage was made, delivery thereunder was made, and a part of the consideration was paid, before the effective date of Title III of the Revenue Act of 1943, the total tax referred to in such section shall be the tax at the rate in force on the day before such effective date.

(b) Cases where new tax imposed. In the case of (1) a lease, (2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, (3) a conditional sale, or (4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments, no tax shall be imposed under section 1651 on the sale of any article if with respect to such article the lease, contract for sale, conditional sale, or chattel mortgage arrangement was made, delivery thereunder was made, and a part of the consideration was paid, before the effective date of Title III of the Revenue Act of 1943.

(c) Existing contracts.

(1) Tax payable by vendee. If (A) any person has, prior to the effective date of Title III of the Revenue Act of 1943, made a bona fide contract for the sale on or after such date, of any article with respect to the sale of which a tax is imposed by that Act or an existing rate of tax is increased by that Act, and (B) such contract does not permit the adding to the amount to be paid under such contract of the whole of such tax or increased rate of tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price.

(2) Tax paid to vendor. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected and paid to the United States by the vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner who shall cause collection of such taxes to be made from the vendee. Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61.

Historical Note

Effective Date. Section was made effective on the first day of the first month which begins more than 10 days after the

date of the enactment of this Act by section 301 of Act Feb. 25, 1944.

§ 1653. Articles classifiable under more than one section

In the case of any article classifiable (a) under section 1651 and one or more sections of Chapter 19, or (b) under more than one section of Chapter 19, only one tax on such article shall be imposed. Where the rates of tax differ, the article shall be subject to tax under that section which imposes the highest rate. Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61.

Historical Note

Effective Date. Section was made effective on the first day of the first month which begins more than 10 days after the

date of the enactment of this Act by section 301 of Act Feb. 25, 1944.

§§ 1654, 1655. Repealed. Mar. 11, 1947, c. 17, § 3, 61 Stat. 12.

Historical Note

Section 1654, Act Feb. 10, 1939, c. 2, § 1634, as added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61, related to the termination date of war tax rates.

Section 1655, Act Feb. 10, 1939, c. 2, § 1635, as added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 302(a), 58 Stat. 61, related to definition of "date of termination of war".

§ 1656. Floor stock refunds on distilled spirits, wines, and cordials, and fermented malt liquors

(a) **In general.** With respect to any article upon which tax is imposed under section 2800(a), 3030(a), or 3150(a), upon which internal revenue tax (including floor stocks tax) at the applicable rate prescribed by such section has been paid, and which, on April 1, 1955, is held by any person and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be credited or refunded to such person (without interest), subject to such regulations as may be prescribed by the Secretary, an amount equal to the difference between the tax so paid and the rate made applicable to such articles on and after April 1, 1955, by such section, if claim for such credit or refund is filed with the Secretary prior to May 1, 1955.

(b) **Limitations on eligibility for credit or refund.** No person shall be entitled to credit or refund under subsection (a) unless (1) such person, for such period or periods both before and after April 1, 1955 (but not extending beyond one year thereafter), as the Commissioner with the approval of the Secretary shall by regulations prescribe, makes and keeps, and files with the Commissioner, such records of inventories, sales, and purchases as may be prescribed in such regulations; and (2) such person establishes to the satisfaction of the Commissioner, with respect to each kind of article for which refund is claimed by him under this section, that on and after the rate reduction date and until the expiration of three months thereafter, the price at which articles of such kind were sold (until a number equal at least to the number on hand on the rate reduction date were sold) reflected, in such manner as the Commissioner may by regulations prescribe with the approval of the Secretary, the amount of the tax reduction.

(c) **[Laws applicable with respect to credits and refunds.]**¹ All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, liqueurs and cordials, imported perfumes containing distilled spirits, and fermented malt liquors shall, insofar as

applicable and not inconsistent with this section, be applicable in respect of the credits and refunds provided for in this section to the same extent as if such credits or refunds constituted credits or refunds of such taxes. Added Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 302, 59 Stat. 575, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 454, 65 Stat. 527; Mar. 31, 1954, c. 126, Title VI, § 601(b) (1), 68 Stat. 46.

1 Subsec. (c) enacted without a catchline which has been supplied by the editor.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Mar. 31, 1951, which substituted "April 1, 1953" for "April 1, 1954" in two places, and substituted "May 1, 1953" for "May 1, 1954" at the end thereof.

Subsec. (b) amended by Act Mar. 31, 1951, which substituted "April 1, 1953" for "April 1, 1954".

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 454(a), which struck out the reference to the war-tax rates formerly imposed on these articles by section 1650 of I.R.C. 1939, struck out the reference to the "rate reduction date (as defined in section 1659)", substituted references to April 1, 1951 (on which date the increased rates effected by such Act are to be reduced under sections 2800(a), 3030(a) and 3150(a) of I.R.C. 1939, as amended by such Act), and substituted reference to section "2800(a), 3030(a), or 3150(a)" in lieu of "2800, 3030, or 3150", respectively.

Subsec. (b) amended by Act Oct. 20, 1951, § 454(b), which substituted "April 1, 1954" in lieu of "the rate reduction date", in three places.

Effective Date of 1951 Amendment. Amendments of this section by Act Oct. 20, 1951, as effective on the first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 1650 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 31, 1951, see 1954 U.S. Code Cong. and Adm. News, p. 2055. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1731; Act Nov. 3, 1945, 1945 U.S. Code Cong. Service, p. 814.

§ 1657. Floor stocks refunds on electric light bulbs

(a) **In general.** With respect to any article upon which tax is imposed under section 3406(a) (10), upon which internal revenue tax at the rate prescribed in section 1650 has been paid, and which, on the rate reduction date, is held by any person and intended for sale, or for use in the manufacture or production of any article intended for sale, there shall be credited or refunded to the manufacturer or producer of such article (without interest), subject to such regulations as may be prescribed by the Commissioner with the approval of the Secretary, an amount equal to so much of the difference between the tax so paid and the tax that would have been paid if the applicable rate had been 10 per centum, as has been paid by such manufacturer or producer to such person as reimbursement for the tax reduction on such articles, if claim for such credit or refund is filed with the Commissioner prior to August 1, 1954, based upon a request for reimbursement submitted by such person to the manufacturer or producer of such article prior to July 1, 1954.

(b) **Limitations on eligibility for credit or refund.** No person shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in subsection (a) as the regulations under subsection (a) prescribe.

(c) **[Laws applicable with respect to credits and refunds.]**¹ All provisions of law, including penalties, applicable in respect of the tax imposed under section 3406(a) (10) shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the credits and refunds

provided for in this section to the same extent as if such credits or refunds constituted credits or refunds of such taxes. Added Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 302, 59 Stat. 575, amended Mar. 31, 1954, c. 126, Title V, § 504(c), 68 Stat. 42.

1 Subsec. (c) enacted without a catchline which has been supplied by the editor.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, (1) which substituted "the tax that would have been paid if the applicable rate had been 10 per centum" for "the tax that would have been paid if section 1650 had not been applicable", and (2) to provide that the manufacturer is to have four rather than three months after the rate reduction date (see sections 1650, 1659 and 3406(a) (10) of I.R.C.1939, and 1954 amendment notes thereunder) in which to file his claim for refund or credit.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Act Nov. 1945, 1945 U.S.Code Cong.Service, p. 814.

§ 1658. Repealed. Mar. 31, 1954, c. 126, Title IV, § 402(c), 68 Stat. 42.

Historical Note

Section, which was added by Act Nov. 8, 1945, 5:17 P.M., E.S.T., c. 453, Title III, § 302, 59 Stat. 576, established effective dates for the former reductions in

tax rates imposed by section 3465(a) (1) (2) (3) with respect to telegraph, telephone, radio, and cable facilities.

§ 1659. Definition of "rate reduction date"

For the purposes of this chapter the term "rate reduction date" means April 1, 1954. Added Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 302, 59 Stat. 576, amended Mar. 11, 1947, c. 17, § 4, 61 Stat. 12; Mar. 31, 1954, c. 126, Title V, § 504(b), 68 Stat. 42.

Historical Note

1954 Amendment. Act Mar. 31, 1954, substituted "April 1, 1954" for "such date as the Congress shall by law prescribe".

1947 Amendment. Act Mar. 11, 1947, amended section by changing the definition of "rate reduction date" from "six months or more after the date of termination of hostilities in the present war" to "such date as Congress shall by law prescribe."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Acts Mar. 11, 1947, 1947 U.S. Code Cong.Service, p. 965; Nov. 8, 1945, 1945 U.S.Code Cong.Service, p. 814.

CHAPTER 10.—ADMISSIONS AND DUES

SUBCHAPTER A.—ADMISSIONS

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SUBCHAPTER B.—DUES

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SUBCHAPTER A.—ADMISSIONS

§ 1700. Tax

There shall be levied, assessed, collected, and paid—

(a) **Single or season ticket; subscription—**(1) **Rate.** A tax of 1 cent for each 10 cents or major fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription. No tax shall be imposed under this paragraph on the amount paid for admission—

(A) if the amount paid for admission is 50 cents or less, or

(B) in the case of a season ticket or subscription, if the amount which would be charged to the holder or subscriber for a single admission is 50 cents or less.

(2) **By whom paid.** The tax imposed under paragraph (1) shall be paid by the person paying for such admission.

(3) **Certain race tracks.** In lieu of the tax imposed under paragraph (1), a tax of 1 cent for each 5 cents or major fraction thereof of the amount paid for admission to any place (including admission by season ticket or subscription) if the principal amusement or recreation offered with respect to such admission is horse or dog racing at a race track. The tax imposed under this paragraph shall be paid by the person paying for such admission.

(b) **Permanent use or lease of boxes or seats—**(1) **Rate.** In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed under paragraph (1) or (3) of subsection (a)), a tax equivalent to 10 per centum (20 per centum if paragraph (3) of subsection (a) would

otherwise apply) of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder.

(2) **By whom paid.** The tax imposed under paragraph (1) shall be paid by the lessee or holder.

(c) **Sales outside box office—(1) Rate.** Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at a price in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1) or (3) of subsection (a), a tax equivalent to 10 per centum (20 per centum if paragraph (3) of subsection (a) applies) of the amount of such excess.

(2) **By whom paid.** The taxes imposed under paragraph (1) shall be returned and paid by the person selling such tickets.

(3) **Repealed.** Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 542(d), 55 Stat. 711.

(d) **Sales by proprietors in excess of regular price—(1) Rate.** A tax equivalent to 50 per centum of the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor.

(2) **By whom paid.** The tax imposed under paragraph (1) shall be returned and paid by the persons selling such tickets.

(3) **Repealed.** Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 542(d), 55 Stat. 711.

(e) **Tax on cabarets, roof gardens, etc.—(1) Rate.** A tax equivalent to 20 per centum of all amounts paid for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place furnishing a public performance for profit, by or for any patron or guest who is entitled to be present during any portion of such performance. The term "roof garden, cabaret, or other similar place" shall include any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment, except instrumental or mechanical music alone, are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise. In no case shall such term include any ballroom, dance hall, or other similar place where the serving or selling of food, refreshment, or merchandise is merely incidental, unless such place would be considered, without the application of the preceding sentence, as a "roof garden, cabaret, or other similar place". A performance shall be regarded as being furnished for profit for purposes of this section even though the charge made for admission, refreshment, service, or merchandise is not increased by reason of the furnishing of such performance. No tax shall be applicable under paragraph (1) or (3) of subsection (a) on account of an amount paid with respect to which tax is imposed under this subsection.

(2) **By whom paid.** The tax imposed under paragraph (1) shall be returned and paid by the person receiving such payments.

(f) **Cross reference.**

For provisions requiring the tax so collected to be held as a special fund in trust for the United States, see section 3661.

53 Stat. 189, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 211, 54 Stat. 523; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 521(a) (1, 2), 541(a), 542(a, d), 55 Stat. 706, 710, 711; July 23, 1942, c. 521, 56 Stat. 703; Oct. 21, 1942, 4:30 p. m., E. W. T.,

c. 619, Title VI, § 622, 56 Stat. 981; Aug. 8, 1947, c. 515, § 11(a), 61 Stat. 919; June 10, 1948, c. 537, § 1, 62 Stat. 504; Aug. 24, 1951, c. 345, § 1, 65 Stat. 198; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 401, 404(a), 65 Stat. 519; Mar. 31, 1954, c. 126, Title II, § 201 (a)-(c), (e)-(g), 68 Stat. 37.

Historical Note

1954 Amendments. Subsec. (a) (1) amended by Act Mar. 31, 1954, § 201(e) (f), which, in first sentence, substituted "major fraction" for "fraction", and, in second sentence, substituted the provisions for tax exemptions on admissions of fifty cents or less, for provisions prohibiting imposition of the tax on amount paid for admission of a child under twelve years of age if amount paid was less than ten cents.

Subsec. (a) (3) added by Act Mar. 31, 1954, § 201(g) (1).

Subsec. (b) (1) amended by Act Mar. 31, 1954, § 201(a), (g) (2), which substituted "paragraph (1) or (3) of subsection (a), a tax equivalent to 10 per centum (20 per centum if paragraph (3) of subsection (a) would otherwise apply)" for "paragraph (1) of subsection (a), a tax equivalent to 11 per centum".

Subsec. (c) (1) amended by Act Mar. 31, 1954, § 201(b), (g) (3), which substituted "paragraph (1) or (3) of subsection (a), a tax equivalent to 10 per centum (20 per centum if paragraph (3) of subsection (a) applies)" for "paragraph (1) of subsection (a), a tax equivalent to 11 per centum".

Subsec. (e) (1) amended by Act Mar. 31, 1954, § 201(c), (g) (4), which, in first sentence, substituted "20 per centum" for "5 per centum", and, in fifth sentence, substituted "paragraph (1) or (3) of subsection (a)" for "subsection (a) (1)".

1951 Amendment. Subsec. (a) (1) amended by Acts Oct. 20, 1951, § 401 and Aug. 24, 1951, § 1. Act Oct. 20, 1951, removed tax on free admission. Act Aug. 24, 1951, added a sentence which related to admission taxes on members of armed forces and was omitted by subsequent amendment.

Subsec. (e) (1) amended by Act Oct. 20, 1951, § 404(a), which inserted third sentence.

1948 Amendment. Subsec. (a) (1) amended by Act June 19, 1948, which added last sentence to exempt hospitalized servicemen and veterans from the admissions tax when admitted free.

1947 Amendment. Subsec. (a) (1) amended by Act Aug. 8, 1947, which terminated the special treatment under the admissions tax with respect to free and reduced-rate admissions extended to members of our armed forces, Civilian Conservation Corps members, and members of the armed forces of any of the United Nations, and terminated the exemption of paid admissions to theaters and other activities operated by or under the Control of the Department of War

and the Navy Department within posts, camps, and reservations by striking out the last sentence.

1942 Amendment. Subsec. (a) (1) amended by Joint Res. July 23, 1942, which excepted therefrom members of military or naval forces of any of the United Nations, when in uniform, and which added last sentence thereto.

Subsec. (e) amended by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, § 541(a).

Subsecs. (b) (1) and (c) (1) amended by Act Sept. 20, 1941, § 521(a) (1), (2), respectively, which substituted "11 per centum" for "10 per centum".

Subsecs. (c) (3) and (d) (3) repealed by Act Sept. 20, 1941, § 542(d), as of the effective date of sections 541-550 of that Act. Prior to such repeal, said subsec. (c) (3) provided:

"How Paid.—The taxes imposed under paragraph (1) shall be returned and paid by the person selling such tickets."

Subsec. (d) (3) provided:
"How Paid.—The tax imposed under paragraph (1) shall be returned and paid in the manner and subject to the interest provided in sections 1715, 1716, and 1717."

Subsec. (e) amended by Act Sept. 20, 1941, § 542(a).

1940 Amendment. Subsec. (a) (1) amended by Act June 25, 1940, which struck out "until July 1, 1941, is less than 41 cents" and inserted in lieu thereof "until July 1, 1940, is less than 41 cents, and after June 30, 1940, and before July 1, 1945, is less than 21 cents," and struck out "is less than 41 cents until July 1, 1941" and inserted in lieu thereof "is less than 41 cents until July 1, 1940 and is less than 21 cents after June 30, 1940, and before July 1, 1945."

1939 Amendment. Subsec. (a) (1) amended by Act June 29, 1939, by inserting "1941" in lieu of "1939."

Effective Date of 1954 Amendments. Section 203 of Act Mar. 31, 1954, provided that the amendments made by such Act to subsecs. (a) (1), (a) (3), (b) (1) and (c) (1) of this section, all of the amendments made by such Act to subsec. (e) (1) of this section except that part of such amendment which changed the tax rate from 11 per centum to 10 per centum, and the amendments made by such Act to sections 1701(a) (2), 1701(e) (2), 1701(f), 1710(a) (1) and 1710(a) (2) of I.R.C.1939, should apply only with respect to amounts paid for admissions on or

after April 1, 1954. Such section 203 further provided that, in addition, such amendments should apply—

“(1) in the case of any season ticket or subscription, only if all the admissions under such ticket or subscription can occur only on or after April 1, 1954; and

“(2) in the case of the permanent use of a box or seat or a lease for the use of such box or seat, only if all the performances or exhibitions at which the box or seat is used or reserved by or for the lessee or holder can occur only on or after April 1, 1954.”

Such section 203 further provided that that part of the amendment made by such Act to subsec. (c) (1) of this section which changed the tax rate from 11 per centum to 10 per centum should apply only with respect to amounts paid on or after April 1, 1954, for admissions on or after such date.

Effective Date of 1951 Amendment. Amendment of subsec. (a) (1) made applicable with respect to amounts paid on or after Nov. 1, 1951, for admissions on or after such date by section 403 of Act Oct. 20, 1951. Amendment of subsec. (e) (1) made applicable only with respect to 10 antemeridians on Nov. 1, 1951, by section 404(b) of Act Oct. 20, 1951.

Section 2 of Act Aug. 24, 1951, provided: “The amendment [of this section] made by this Act shall be applicable to admissions on and after the first day of the first month which begins more than ten days after the date of the enactment of this Act [August 24, 1951].”

Effective Date of 1948 Amendment. Section 2 of Act June 19, 1948, provided: “The amendment made by this Act [Act June 19, 1948] shall be effective on and after the first day of the first month which commences more than twenty days after the enactment of this Act. [June 19, 1948].”

Effective Date of 1947 Amendment. Section 11(b) of Act Aug. 8, 1947, provided: “(b) The amendments made by subsection (a) [section 11(a) of Act Aug. 8, 1947, cited to text], insofar as applicable with respect to amounts paid for admission, shall be applicable to amounts paid after December 31, 1947, and, insofar as applicable to free admissions, shall be applicable with respect to such admissions after December 31, 1947.”

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, § 521(a), which affected subsecs. (b) (1) and (c) (1) of this section, were made applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Act Sept. 20, 1941, §§ 541, 542, which affected subsecs. (a) (1), (b) (1), (c) (1), (c) (3), (d) (3), and (e) of this section, were made effective on, and applicable only with respect to the period beginning with Oct. 1, 1941, by section 550(a) thereof. However, section 550(b) of that Act provided that “Despite the provisions of subsection (a), the tax imposed by section 1700(e) of the Internal Revenue Code, [1939] as amended by section 542 of this Act (relating to cabaret, etc., tax), shall be applicable only with respect to the period beginning at 10 a. m. on October 1, 1941, and the tax imposed by such subsection as in force prior to its amendment by section 542 of this Act, as modified by section 1650(a) of the Internal Revenue Code [1939] shall be applicable with respect to the period before 10 a. m. on such date.”

Special Credit or Refund of Transportation and Admissions Taxes. Section 506 of Act Mar. 31, 1954, Title V, provided:

“Notwithstanding any other provision of law, in any case in which tax has been collected prior to April 1, 1954, at the rate in effect (without regard to the amendments made by this Act [amending various sections of I.R.C.1939, for enumeration of which see Short Title note under section 1651 of I.R.C.1939]) prior to April 1, 1954, for or in connection with the transportation of persons which begins on or after April 1, 1954, or for admissions (referred to in section 201 [which amended this section] other than subsections (b), (c), and (g) thereof [which amended subsecs. (a) (3), (b) (1), (c) (1), and (e) (1) of this section], of this Act) on or after April 1, 1954, the person who collected the tax shall pay the same over to the United States; but credit or refund (without interest) of the tax collected in excess of that applicable (by reason of the amendments made by this Act) on or after April 1, 1954, shall be allowed to the person who collected the tax as if such credit or refund were a credit or refund under the applicable provision of the Internal Revenue Code [1939], but only to the extent that, prior to the time such transportation has begun or prior to the event to which the right to admission relates, he has repaid the amount of such excess to the person from whom he collected the tax, or has obtained the consent of such person to the allowance of the credit or refund. For the purpose of this Act, transportation shall not be considered to have begun on or after April 1, 1954, if any part of the transportation paid for (or for which payment has been obligated) commenced before April 1, 1954.”

Exemptions from Tax. Exemption of 1941 Presidential Inauguration tickets from provisions of this section was provided for in Joint Res. Oct. 9, 1940, e. 798, 54 Stat. 1090.

Termination of War Tax Rates. The effective period of the war tax rates provided for in section 1650 of I.R.C.1939,

which had temporarily affected the permanent rates specified in subsecs. (a), (b), (c) and (e) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954. See such section, and notes thereunder; and for effective date of such amendment to section 1650, in so far as it affects the rates imposed by subsecs. (a) (1), (b), (c) and (e) of this section, see note under section 1651 of I.R.C. 1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its ap-

plication would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U. S. Code Cong. and Adm. News, p. 2055. See, also, Acts Oct. 20, 1951, 1951 U. S. Code Cong. Service, p. 1781; Aug. 24, 1951, 1951 U. S. Code Cong. Service, p. 1706; June 19, 1948, 1948 U. S. Code Cong. Service, p. 1912; Aug. 8, 1947, 1947 U. S. Code Cong. Service, p. 1668.

§ 1701. Exemptions from tax

(a) Certain religious, educational, or charitable entertainments, etc.

(1) In general. Except as provided in paragraph (2), any admissions to the proceeds of which inure—

(A) exclusively to the benefit of—

(i) a church or a convention or association of churches;

(ii) an educational institution which is exempt under section 101(6) or which is an educational institution of a government or political subdivision thereof, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on;

(iii) a corporation or any community chest, fund, or foundation organized and operated exclusively for charitable purposes, exempt under section 101(6), if such corporation or organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions from the general public;

(iv) a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions;

(v) an organization (organized prior to October 1, 1951) which is exempt under section 101(6) and which is operated for the purpose of conducting an annual chautauqua program of educational, cultural, and religious activities at a permanent location—

if no part of the net earnings thereof inures to the benefit of any private stockholder or individual;

(B) exclusively to the benefit of National Guard organizations, Reserve officers' associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private stockholder or individual; or

(C) exclusively to the benefit of a police or fire department of any city, town, village, or any municipality or exclusively to a retirement, pension, or disability fund for the sole benefit of members of such a police or fire department or to a fund for the heirs of such members.

(2) Nonexempt admissions. The exemption provided under paragraph (1) shall not apply in the case of admissions to (A) any athletic game or exhibition unless the proceeds inure exclusively to the benefit of an elementary or secondary school or unless in the case of an athletic game between teams composed of students from elementary or secondary

schools, the entire gross proceeds from such game inure to the benefit of a hospital for crippled children, (B) wrestling matches, prize fights, or boxing, sparring, or other pugilistic matches or exhibitions, (C) carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation, or (D) any motion picture exhibition. Clauses (A) and (B) shall not apply in the case of any athletic event between educational institutions held during the regular athletic season for such event, if the proceeds therefrom inure exclusively to the benefit of such institutions.

(b) **Agricultural fairs.** Any admissions to agricultural fairs if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same—if the proceeds therefrom are used exclusively for the improvement, maintenance, and operation of such agricultural fairs; or

(c) **Certain concerts.** Any admissions to concerts conducted by a civic or community membership association if no part of the net earnings thereof inures to the benefit of any stockholders or members of such association; or

(d) **Municipal swimming pools, etc.** Any admissions to swimming pools, bathing beaches, skating rinks, or other places providing facilities for physical exercise, operated by any State or political subdivision thereof or by the United States or any agency or instrumentality thereof—if the proceeds therefrom inure exclusively to the benefit of the State, political subdivision, United States, agency, or instrumentality. For the purposes of this subsection the term "State" includes Alaska, Hawaii, and the District of Columbia; or

(e) **(1) Home and garden tours.** Any admission to a home or garden which is temporarily opened to the general public as part of a program conducted by a society or organization to permit the inspection of historical homes and gardens—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

(2) **Historic sites, museums, and planetariums.** Any admission to an historic site, house, or shrine, to a museum of history, art, or science, to a planetarium, or to any exhibition in connection with any of the foregoing, operated—

(A) by any State or political subdivision thereof or by the United States or any agency or instrumentality thereof—if the proceeds therefrom inure exclusively to the benefit of the State, political subdivision, United States, agency, or instrumentality, or

(B) by any society or organization not organized for profit—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

For the purposes of subparagraph (A), the term "State" includes Alaska, Hawaii, and the District of Columbia; or

(f) **Certain amateur theater performances.** Any admission to an amateur performance presented and performed by a civic or community theater group or organization—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual. 53 Stat. 190, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 402(b), c. 65 Stat. 519; Mar. 31, 1954, c. 126, Title II, § 201(h)–(k), 68 Stat. 38.

REINSTATEMENT OF PREWAR EXEMPTIONS

Section 402(a) of Act Oct. 20, 1951, provided that: "Notwithstanding section 541(b) of the Revenue Act of 1941 [Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, Part IV, § 541(b), 55 Stat. 710, set out as a note under this section, and which terminated the exemptions

from admissions tax provided by this section with respect to amounts paid, on or after October 1, 1941, the provisions of section 1701 (relating to exemptions from the admissions tax) shall apply to amounts paid on or after the effective date specified in section 403 of this Act [November 1, 1951, as provided by such section 403, set out in note under this section] for admissions on or after such date."

Historical Note

1954 Amendments. Subsec. (a) (2) amended by Act Mar. 31, 1954, § 201(h), (i), which, in clause (A), substituted "between teams composed of students from elementary or secondary schools" for "between two elementary or secondary schools", and added sentence excluding clauses (A) and (B) from application if the proceeds from an athletic event between educational institutions held during the regular athletic season for such event inure exclusively to the benefit of such institutions.

Subsec. (e) (2) amended by Act Mar. 31, 1954, § 201(j), (k) (1), which substituted reference to "museum of history, art, or science", to reference to "museums", extended the provisions to planetaria, extended the exemptions to historic sites, museums, etc., operated, under the conditions stated, by governmental units or nonprofit organizations, and substituted "; or" for the period at the end thereof.

Subsec. (f) added by Act Mar. 31, 1954, § 201(k) (2).

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 402(b), to restate the exemptions and nonexemptions from admissions tax.

Subsec. (b) amended by Act Oct. 20, 1951, § 402(b) to omit "or admissions to any exhibit, entertainment, or other pay feature conducted by such association as part of any such fair" following "conducting the same".

Subsec. (d) added by Act Oct. 20, 1951, § 402(c).

Effective Date of 1954 Amendments. Effective date of amendments to this section by Act Mar. 31, 1954, as applying

only with respect to amounts paid for admissions on or after April 1, 1954, see note under section 1700 of I.R.C.1939.

Effective Date of 1951 Amendment. Amendments of subssecs. (a) and (b) and addition of subsec. (d) made applicable with respect to amounts paid on or after Nov. 1, 1951, for admissions on or after such date by section 403 of Act Oct. 20, 1951.

Termination of Applicability of Section. Act Sept. 20, 1941, 12:15 p. m., H. S. T., c. 412, Title V, § 541(b), 55 Stat. 710, provided that this section "shall not apply with respect to amounts paid, on or after the effective date of this Part, for admission." Said "Part" was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof; certain exceptions to such effective date being made by section 550(b)-(d) of that Act, which are explained in notes under sections 1650, 1700, and 3435 of I.R.C.1939.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

§ 1702. Printing of price on ticket

The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back of that part of the ticket which is to be taken up by the management of the theater, opera, or other place of amusement, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. 53 Stat. 191.

§ 1703. Penalties

(a) Failure to print correct price on ticket. Whoever sells an admission ticket or card on which the name of the vendor and price is not printed, stamped, or written, as provided in section 1702, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.

§ 1703

ADMISSIONS AND DUES

(b) Cross reference

For other penalties relating to admissions, see section 1718.

53 Stat. 191.

§ 1704. Admission defined

The term "admission" as used in this chapter includes seats and tables, reserved or otherwise and other similar accommodations, and the charges made therefor. 53 Stat. 191.

SUBCHAPTER B.—DUES

§ 1710. Tax

(a) Rate. There shall be levied, assessed, collected, and paid—

(1) Dues or membership fees. A tax equivalent to 20 per centum of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of \$10 per year.

(2) Initiation fees. A tax equivalent to 20 per centum of any amount paid as initiation fees to such a club or organization, if such fees amount to more than \$10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of \$10 per year.

(3) Life memberships. In the case of life memberships, a tax equivalent to the tax upon the amount paid by active resident annual members for dues or membership fees other than assessments, but no tax shall be paid upon the amount paid for life membership. In such a case, the tax shall be paid annually at the time for the payment of dues by active resident annual members.

(b) By whom paid. The taxes imposed by subdivision (a) shall be paid by the person paying such dues or fees, or holding such life membership. 53 Stat. 192, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 543(a), 55 Stat. 711; Mar. 31, 1954, c. 126, Title II, § 202, 68 Stat. 39.

Historical Note

1954 Amendments. Subsec. (a) (1) amended by Act Mar. 31, 1954, § 202(a), which substituted "20 per centum" for "11 per centum".

Subsec. (a) (2) amended by Act Mar. 31, 1954, § 202(b), which substituted "20 per centum" for "11 per centum".

1941 Amendment. Subsec. (a) (1) amended by Act Sept. 20, 1941, which increased the tax from 10 to 11 per cent on dues and fees in excess of \$10 instead of \$25.

Subsec. (a) (2) amended by Act Sept. 20, 1941, which increased tax on initiation fees from 10 to 11 per cent and subjected to tax the excess of dues or fees of \$10 instead of \$25.

Effective Date of 1954 Amendments. Effective date of amendments to this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1700 of I.R.C.1939.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on,

and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Termination of War Tax Rates. The effective period of the war tax rates provided for in section 1650 of I.R.C.1939, which had temporarily affected the permanent rates specified in subsecs. (a) (1) and (a) (2) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954. See such section, and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm. News, p. 2055.

§ 1711. Exemptions from tax

There shall be exempted from the provisions of section 1710 all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university. 53 Stat. 192.

§ 1712. Definitions

As used in this subchapter—

(a) **Dues.** The term “dues” includes any assessment, irrespective of the purpose for which made, and any charges for social privileges or facilities, or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities, for any period of more than six days; and

(b) **Initiation fees.** The term “initiation fees” includes any payment, contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned. 53 Stat. 192, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 543(b), 55 Stat. 711.

Historical Note

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which added provision enumerating charges for particular privileges or facilities for more than six day period.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to,

the period beginning with Oct. 1, 1941, by section 550(a) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes “Title 26—Internal Revenue Acts”.

SUBCHAPTER C.—PROVISIONS COMMON TO ADMISSIONS AND DUES

§ 1715. Payment of tax

(a) **Collection by recipient of admissions, dues, and fees.** Every person receiving any payments for admission, dues, or fees, subject to the tax imposed by section 1700 or 1710 shall collect the amount thereof from the person making such payments. Every club or organization having life members shall collect from such members the amount of the tax imposed by section 1710.

(b) **Place of payment.** The taxes collected under subsection (a), and the taxes required to be paid under section 1700(c), (d), or (e), shall be paid to the collector of the district in which the principal office or place of business is located.

(c) **Time for payment.** The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

(d) Excess payments

(1) Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent return.

(2) In the case of any overpayment or overcollection of any tax imposed by this chapter, the person making such overpayment or overcollection may take credit therefor against taxes due upon any return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

§ 1715

ADMISSIONS AND DUES

(e) Cross reference

For provisions requiring the tax so collected to be held as a special fund in trust for the United States, see section 366L.

53 Stat. 192, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 542(b), 55 Stat. 711.

Historical Note

1941 Amendment. Subsec. (b) amended by Act Sept. 20, 1941, which inserted provision as to taxes paid under section 1700(c), (d), or (e).

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the

period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1716. Returns

(a) **Requirement.** Every person required under subsection (a) of section 1715 to collect the taxes, or required under section 1700(c), (d), or (e) to pay the taxes, imposed by this chapter shall make returns under oath, in duplicate, in such manner and containing such information as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe.

(b) **Time for filing.** The returns required under this section shall be made at such times as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe.

(c) **Place for filing.** The returns provided for in this section shall be filed with the collector of the district in which the principal office or place of business is located. 53 Stat. 193, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 542(c), 55 Stat. 711.

Historical Note

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which inserted provision as to returns from persons required to pay taxes under section 1700(c), (d), or (e).

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the

period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1717. Addition to tax in case of nonpayment

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. 53 Stat. 193.

§ 1718. Penalties

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax im-

posed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. 53 Stat. 193.

§ 1719. Discretionary method allowed Commissioner for collecting tax

Whether or not the method of collecting any tax imposed by this chapter is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner, with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. 53 Stat. 194.

§ 1720. Records, statements, and returns

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe. 53 Stat. 194.

§ 1721. Rules and regulations

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791.
53 Stat. 194.

§ 1722. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 194.

§ 1723. Effective date of chapter

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 194.

§ 1724. Cross references

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see sections 3310 to 3313, and chapters 34 to 37, inclusive.
53 Stat. 194.

CHAPTER 11.—DOCUMENTS, OTHER INSTRUMENTS, AND PLAYING CARDS

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Sec.

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- 1801. Corporate securities.
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- 1804. Insurance policies.
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- 1815. Affixing.
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- 1820. Underpayment of tax.
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- 1830. Exemption in case of exportation.
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- 1835. Records, statements, and returns.
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SUBCHAPTER A.—RATE AND PAYMENT OF TAX

Historical Note

Stamp Tax On Passage Tickets Not To Apply. Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 554(c), 55 Stat. 722, which was made effective on Oct. 1, 1941, by section 558 of that Act, provided as follows: "No tax shall be imposed

under chapter 11 of the Internal Revenue Code [this chapter] on a ticket sold or issued for passage the amount paid for which is taxable under section 3469 of the Internal Revenue Code [1939]."

§ 1800. Imposition of tax

There shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or

things, or any of them, are written or printed, the several taxes specified in such sections. 53 Stat. 195.

Historical Note

Prior Laws. R.S. § 3418 imposed a tax on bank checks, drafts, and orders for the payment of money drawn on banks, bankers, and trust companies. It was modified by Act Feb 8, 1875, c. 36, § 15, 18 Stat. 310, which amended Act June 30, 1864, c. 173, § 151, 13 Stat. 291, which was incorporated into section 3418.

Receipts in receipt books of savings banks were exempted from the stamp tax by Act March 3, 1875, c. 127, § 6, 18 Stat. 340.

R.S. § 3421 rendered unstamped instruments subject to a stamp tax inadmissible in evidence, made it unlawful to record them, and declared such recording void.

R.S. § 3435 defined manufacturers of the articles mentioned in Schedule A, following R.S. § 3437, as persons who offered or exposed for sale any of such articles.

R.S. § 3441 allowed a drawback on fermented liquors and on all the articles mentioned in Schedule A, following R.S. § 3437, consisting of medicinal preparations, perfumery, cosmetics, matches, and playing cards. It was amended by Act March 1, 1879, c. 125, § 17, 20 Stat. 350, by striking out a clause excluding any allowance less than \$10.

R.S. § 3442 made certificates of drawback issued pursuant to the preceding section receivable for taxes.

§ 1801. Corporate securities

On all bonds, debentures, or certificates of indebtedness issued by any corporation, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each \$100 of face value or fraction thereof, 11 cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured. The tax under this section shall not apply to any instrument under the terms of which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 per centum of the cash amount to which entitled upon maturity of the instrument. Obligations described in this section issued by any receiver, trustee in bankruptcy, assignee, or other person, having custody of property, or charge of the affairs, of any corporation, shall, for the purposes of this chapter, be deemed to be issued by the corporation. 53 Stat. 195, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (3), 55 Stat. 706; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 506(a), 56 Stat. 957.

Historical Note

1942 Amendment. Last sentence added by Act Oct. 21, 1942.

1941 Amendment. Act Sept. 20, 1941, substituted "11 cents" for "10 cents until July 1, 1945, and 5 cents thereafter".

1940 Amendment. Act June 25, 1940, struck out "1941" and inserted in lieu thereof "1945".

1939 Amendment. Act June 29, 1939, inserted "1941" in lieu of "1939".

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to obligations issued after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 506(h) (1) thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Temporary Increase in Rates. Defense tax for 5-year period after June 30, 1940, which increased certain tax rates, and termination thereof by Act Sept. 20, 1941, see note set out under section 1650 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1802 DOCUMENTS, INSTRUMENTS, ETC.

§ 1802. Capital stock (and similar interests)

(a) **Original issue.** On each original issue, whether on organization or reorganization, of shares or certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, or by any investment trust or similar organization (or by any person on behalf of such investment trust or similar organization) holding or dealing in any of the instruments mentioned or described in this subsection or section 1801 (whether or not such investment trust or similar organization constitutes a corporation within the meaning of this title), on each \$100 of par or face value or fraction thereof of the certificates issued by such corporation or by such investment trust or similar organization (or of the shares where no certificates were issued), 11 cents: *Provided*, That where such shares or certificates are issued without par or face value, the tax shall be 11 cents per share (corporate share, or investment trust or other organization share, as the case may be), unless the actual value is in excess of \$100 per share; in which case the tax shall be 11 cents on each \$100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than \$100 per share, in which case the tax shall be 3 cents on each \$20 of actual value, or fraction thereof, of such certificates (or of the shares where no certificates were issued): *Provided further*, That where such certificates (or shares, where no certificates are issued) are issued in a recapitalization, the tax payable shall be that proportion of the tax computed on such certificates or shares issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization. The stamps representing the tax imposed by this subsection shall be attached to the stock books or corresponding records of the organization and not to the certificates issued.

(b) **Sales and transfers.** On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each \$100 of par or face value or fraction thereof of the certificates of such corporation or other organization (or of the shares where no certificates were issued) 5 cents and where such shares or certificates are without par or face value, the tax shall be 5 cents on the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share, as the case may be): *Provided*, That in case the selling price, if any, is \$20 or more per share the above rate shall be 6 cents: *Provided further*, That upon any transfer of an interest in a partnership owning shares or certificates of stock, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: *Provided further*, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock loaned: *Provided further*, That the tax shall not be imposed upon any delivery or transfer to a trustee or public officer, made pursuant to Federal or State law to secure the performance of an obligation, or upon a redelivery or retrans-

fer of such shares or certificates to the transferor, if such delivery, transfer, redelivery, or retransfer is accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker or his registered nominee for sale, nor upon deliveries or transfers by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same, nor upon deliveries or transfers by a purchasing broker to his registered nominee if the shares or certificates so delivered or transferred are to be held by such nominee for the same purpose as if held by the broker, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the corporation or other organization the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers: *Provided further*, That as used in this section the term "registered nominee" shall mean any person registered with the collector in accordance with such rules and regulations as the Commissioner with the approval of the Secretary shall prescribe. The tax shall not be imposed upon deliveries or transfers of shares or certificates—

(1) From the owner to a custodian if under a written agreement between the parties the shares or certificates are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

(3) From a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

The tax imposed by this subsection shall not be imposed upon any delivery or transfer by an executor or administrator to a legatee, heir, or distributee of shares or certificates of stock if it is shown to the satisfaction of the Commissioner that the value of such shares or certificates is not

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greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.

(c) **Transfers by operation of law.** No delivery or transfer under subsection (b) not otherwise exempt shall be exempt because effected by operation of law. The tax under such subsection shall not be imposed upon any delivery or transfer—

(1) From a decedent to his executor or administrator.

(2) From a minor to his guardian, or from a guardian to his ward upon attaining majority.

(3) From an incompetent to his committee or similar legal representative, or from a committee or similar legal representative to a former incompetent upon removal of disability.

(4) From a bank, trust company, financial institution, insurance company, or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or part, under State or Federal law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto.

(5) From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee, or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto.

(6) From a transferee under paragraphs (1) to (5), inclusive, to his successor acting in the same capacity, or from one such successor to another.

(7) From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5(b) of the Trading with the Enemy Act (40 Stat. 415), as amended by the First War Powers Act (55 Stat. 838).

(8) From trustees to surviving, substituted, succeeding, or additional trustees of the same trust.

(9) Upon the death of a joint tenant or tenant by the entireties, to the survivor or survivors.

No exemption shall be granted under this subsection unless the delivery or transfer is accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe. 53 Stat. 196, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, Title IV, § 402, 53 Stat. 862, 883; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (4), (5), 55 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 506(b) (1), 56 Stat. 958; Aug. 8, 1947, c. 518, 61 Stat. 921; Oct. 25, 1949, c. 720, § 4(a), 63 Stat. 892; May 23, 1952, c. 329, § 1(a), 66 Stat. 93.

Historical Note

References in Text. Section 5(b) of the Trading with the Enemy Act (40 Stat. 415), as amended by the First War Powers Act (55 Stat. 838), referred to in subsec. (c) (7), is classified to section 5(b) of Appendix to Title 50, War and National Defense.

1952 Amendment. Subsec. (b) amended by Act May 23, 1952, to exempt from the transfer tax all deliveries or transfers of shares or certificates of stock to a

trustee or public officer, made pursuant to a statutory requirement, to secure the performance of an obligation, and any redelivery or retransfer of such shares or certificates to the transferor, if such delivery is accompanied by a certificate setting forth the facts.

1949 Amendment. Subsec. (b) amended by Act Oct. 25, 1949, which substituted a semicolon for a period at the end of clause (2), and added clause (3).

1947 Amendment. Subsec. (a) amended by Act Aug. 8, 1947, which added second proviso to first sentence.

Subsec. (b) amended by Act Aug. 8, 1947, which added second proviso and inserted "nor upon mere loans of stock" following "deposited" in third proviso.

1942 Amendment. Subsec. (c) added by Act Oct. 21, 1942.

1941 Amendment. Subsecs. (a) and (b) amended by Act Sept. 20, 1941, § 521(a) (4), (5), respectively, which affected rates.

1940 Amendment. Act June 25, 1940, continued tax until 1945 by substituting "1945" for "1941".

1939 Amendment. "1941" was inserted in lieu of "1939", wherever appearing in section by Act June 29, 1939.

Subsec. (b), last par., added by Act June 29, 1939, § 402.

Effective Date of 1952 Amendment. Section 1(c) of Act May 23, 1952, provided that the amendment of this section by Act May 23, 1952, should take effect as of May 24, 1952.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made applicable to deliveries and transfers on or after the thirtieth day after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 506(h) (2) thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, cited to text, were made applicable only with respect to the period after the date

of enactment of that Act, by section 521 (b) thereof.

Death Prior to Oct. 25, 1949; Effect on Delivery or Transfer of Stock. Section 4 (b) of Act Oct. 25, 1949, provided that: "In the case of the death before the date of the enactment of this Act [Oct. 29, 1949] of a nominee of a corporation (whether or not such nominee was registered), the tax under section 1802(b) of the Internal Revenue Code [this section] shall not be imposed upon any delivery or transfer of stock from the executor or administrator of such nominee to such corporation if such delivery or transfer is made on or before the date of the enactment of this Act [Oct. 29, 1949] or within one year after such date."

Temporary Increase in Rates. Defense tax for 5-year period after June 30, 1940, which increased certain tax rates, and termination thereof by Act Sept. 20, 1941, see note set out under section 1650 of I.R.C.1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act May 23, 1952, see 1952 U. S Code Cong. and Adm. News, p. 1489. See, also, Act Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1683.

§ 1804.1 Insurance policies

(a) **Insurance policies other than life, and indemnity, fidelity, or surety bonds.** On each policy of insurance (other than life), indemnity, fidelity, or surety bond, or certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called whereby a contract of insurance or an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, if issued to or for, or in the name of, a domestic corporation or partnership, or an individual resident of the United States, or with respect to hazards, risks, or liabilities within the United States, if issued to or for, or in the name of, a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, and if the insurer is a nonresident alien individual, or a foreign partnership, or a foreign corporation, and if such policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or District of the United States within which such insurer is authorized to do business, a tax of 4 cents on each dollar, or fractional part thereof, of the premium charged.

(b) **Life insurance, sickness, and accident policies, and annuity contracts.** On each policy of insurance or annuity contract, or certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States, if the insurer is a nonresident alien individual, or a foreign partnership, or a foreign corporation, unless such policy or other instrument is signed or countersigned by an officer or agent of the insurer in a State, Territory,

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or District of the United States within which such insurer is authorized to do business, or unless the insurer is subject to tax under section 201, a tax of 1 cent on each dollar or fractional part thereof, of the premium charged.

(c) **Reinsurance.** On each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts described in subsections (a) and (b) of this section if the reinsurer is a nonresident alien individual, or a foreign partnership, or a foreign corporation, and if such policy or other instrument is not signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or District of the United States within which such reinsurer is authorized to do business, a tax of 1 cent on each dollar, or fractional part thereof, of the premium charged.

(d) When used in this section—

(1) The term "indemnity, fidelity, or surety bond" includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(2) The term "insurer" includes any person who shall become bound by an obligation of the nature of an indemnity, fidelity, or surety bond, where a premium is charged for the execution of such obligation. 53 Stat. 197, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521 (a) (6), 55 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 502(a), 56 Stat. 955.

¹ So in original. There is no section 1803.

Historical Note

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1941 Amendment. Act Sept. 20, 1941, substituted "4 cents" for "3 cents".

Effective Date of 1942 Amendment. Amendments by Act Oct. 21, 1942, were made effective by section 502(b) thereof, as follows: "(b) The amendments made by this section [to section 1804] shall apply to the making, continuing, or renewal of contracts occurring on or after the first day of the first month which begins more than 10 days after the date of the

enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.]."

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1805. Silver bullion

On all transfers of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the total of the cost thereof and allowed expenses, 50 per centum of the amount of such excess. On every such transfer there shall be made and delivered by the transferor to the transferee a memorandum to which there shall be affixed lawful stamps in value equal to the tax thereon. Every such memorandum shall show the date thereof, the names and addresses of the transferor and transferee, the interest in silver bullion to which it refers, the price for which such interest is or is to be transferred and the cost thereof and the allowed expenses. Stamps affixed under this section shall be canceled (in lieu of the manner provided in section 1816) by such officers and in such manner as regulations under this section shall prescribe. Such officers shall cancel such stamps only if it appears that the proper tax is

being paid, and when stamps with respect to any transfer are so canceled, the transferor and not the transferee shall be liable for any additional tax found due or penalty with respect to such transfer. The Commissioner shall abate or refund, in accordance with regulations issued hereunder, such portion of any tax hereunder as he finds to be attributable to profits (1) realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use and (a) not resulting from a change in the market price of silver bullion, or (b) offset by contemporaneous losses incurred in transactions in interests in silver bullion determined, in accordance with such regulations, to have been specifically related hedging transactions; or (2) offset by contemporaneous losses attributable to changes in the market price of silver bullion and incurred in transactions in silver foreign exchange determined, in accordance with such regulations, to have been hedged specifically by the interest in silver bullion transferred. The provisions of this section shall extend to all transfers in the United States of any interest in silver bullion, and to all such transfers outside the United States if either party thereto is a resident of the United States or is a citizen of the United States who has been a resident thereof within three months before the date of the transfer or if such silver bullion or interest therein is situated in the United States; and shall extend to transfers to the United States Government (the tax in such cases to be payable by the transferor), but shall not extend to transfers of silver bullion by deposit or delivery at a United States mint under proclamation by the President or in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934, 48 Stat. 1179 (U.S.C., Title 31, § 316(a)).¹

As used in this section—

The term "cost" means the cost of the interest in silver bullion to the transferor, except that (a) in case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the cost to a transferor who is the producer shall be deemed to be the market price at the time of production determined in accordance with regulations issued hereunder; (b) in the case of an interest in silver bullion acquired by the transferor otherwise than for valuable consideration, the cost shall be deemed to be the cost thereof to the last previous transferor by whom it was acquired for a valuable consideration; and (c) in the case of any interest in silver bullion acquired by the transferor in a wash sale, the cost shall be deemed to be the cost to him of the interest transferred by him in such wash sale, but with proper adjustment, in accordance with regulations under this section, when such interests are in silver bullion for delivery at different times.

The term "transfer" means a sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer, whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale; or means to make a transfer as so defined.

The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

The term "allowed expenses" means usual and necessary expenses actually incurred in holding, processing, or transporting the interest in silver bullion as to which an interest is transferred (including storage, insurance, and transportation charges but not including interest, taxes, or charges in the nature of overhead), determined in accordance with regulations issued hereunder.

The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer.

The term "wash sale" means a transaction involving the transfer of an interest in silver bullion and, within thirty days before or after such

transfer, the acquisition by the same person of an interest in silver bullion. Only so much of the interest so acquired as does not exceed the interest so transferred, and only so much of the interest so transferred as does not exceed the interest so acquired, shall be deemed to be included in the wash sale.

The term "silver bullion" means silver which has been melted, smelted, or refined and is in such state or condition that its value depends primarily upon the silver content and not upon its form.

The term "person" means an individual, partnership, association, or corporation.

The Secretary is authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this section. 53 Stat. 198, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 44, eff. Feb. 11, 1939.

¹ So in original.

Historical Note

1941 Amendment. Last two pars. were substituted at end of section for that part of the section following par. defining "silver bullion" (constituting former last four pars.) by Joint Res. Mar. 17, 1941.

Effective Date of 1941 Amendment. Section 2 of Act Mar. 17, 1941, provided that amendment of this section by said Act Mar. 17, 1941, be effective as if enacted on Feb. 10, 1939. Section 3 of Act Feb. 10, 1939, c. 2, § 53 Stat. 1 provided that, except as otherwise provided, I.R.C. 1939 should take effect on Feb. 11, 1939.

Approval of the President. Power of the Secretary of the Treasury to perform, without the approval, ratification, or other action of the President, the functions vested in him, by this section, see Ex Ord. No. 10289, September 17, 1951, 16 F.R. 9409, set out as a note under section 301 of Title 3, The President.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see Volumes "Title 26—Internal Revenue Acts".

§ 1806. Repealed. Mar. 11, 1947, c. 17, § 8(c), 61 Stat. 13.

Historical Note

Section, Act Feb. 10, 1939, c. 2, § 1806, 53 Stat. 199; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (7), 55 Stat. 707, related to stamp tax on passage tickets.

Effective Date. Subsec. (c) of section 8, which repealed this section, provided in part that the repeal became effective with respect to tickets sold or issued on or after the first day of the first month which began more than twenty days after Mar. 11, 1947.

§ 1807. Playing cards

(a) **General rule.** Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of 13 cents per pack. This tax shall be in addition to any import duties imposed on such articles of foreign manufacture.

(b) **Defense tax for five years.** In lieu of the rate of tax specified in subsection (a), the rate of tax for the period after June 30, 1940, and before July 1, 1945, shall be 11 cents. 53 Stat. 199, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 215, 54 Stat. 526; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 531, 55 Stat. 708.

Historical Note

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which substituted "13 cents" for "10 cents".

1940 Amendment. Subsec. (a) was created from section as originally enacted and heading "(a) General Rule—" was inserted by Act June 25, 1940.

Subsec. (b) was added by Act June 25, 1940.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 536 thereof.

Termination of Rates. Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 536, 550(a), 55 Stat. 710, 715, provided for the termination of the applicability of the rates specified in subsec. (b) of this section as follows:

"[§ 536] The amendments made by this Part [Act Sept. 20, 1941, Title V, Part III, §§ 531-536, affecting sections 1807, 1850, 2800, 2837, 2830, 3152, and 3400 of I.R.C.1939] shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

"[§ 550] (a) The amendments made by this Part [Act Sept. 20, 1941, Title V, Part IV, §§ 541-550, affecting I.R.C.1939, §§ 1700, 1701, 1710, 1712, 1715, 1716, 3403,

3404, 3405, 3409, 3441, 3465, 3466; and Title 16, Conservation, §§ 18e, 407d] shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

Prior Laws. R.S. § 3419, imposed a tax on medicinal preparations, perfumery, cosmetics, matches, playing cards, etc., as designated in Schedule A, following R.S. § 3437.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see Volumes "Title 26—Internal Revenue Acts".

§ 1808. Exemptions

There shall not be taxed under this chapter—

(a) **Government and State obligations.** Any bond, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power; or

(b) **Bonds of indemnity.** Any bond of indemnity required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-savings certificate, warrant or check, issued by the United States; or

(c) **Stocks and bonds of domestic building and loan associations and mutual ditch or irrigation companies.** Stocks and bonds issued by domestic building and loan associations, savings and loan associations, cooperative banks, and homestead associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies; or

(d) **Stocks and bonds of farmers', fruit growers', or cooperative associations.** Stocks and bonds and other certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in paragraph (12) of section 101.

(e) **Corporate reorganizations and reorganization of railroads.** The provisions of sections 1801, 1802, and 1821(b) of this chapter and the provisions of sections 3481 and 3482 of Chapter 31 shall not apply to the issuance, transfer or exchange of securities, or the making, delivery or filing of conveyances to make effective any plan of reorganization or adjustment—

(1) confirmed under the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended,

(2) approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of such Act, or

(3) approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of such Act, if the issuance, transfer, or exchange of securities, or the making, delivery or filing of instruments of transfer or conveyances, occurs within five years from the date of such confirmation or approval.

(f) **Orders of the Securities and Exchange Commission.** The provisions of sections 1801, 1802, and 1821(b) of this chapter and the provisions of sections 3481 and 3482 of Chapter 31 shall not apply to the issuance, transfer, or exchange of securities, or making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 373(a) of Chapter 1: *Provided*, That (1) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities, or conveyances are made recites that such issuance, transfer, or exchange, or conveyances are necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U.S.C., Title 15, sec. 79k (b)), (2) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed, and (3) such issuance, transfer, or exchange, or conveyance is made in obedience to such order.

(g) **Common trust funds.** The provisions of section 1802(a) shall not apply to the issue of shares or certificates of a common trust fund, as defined in section 169.

(h) **Cross reference.**

For exemption in case of playing cards exported to a foreign country, see section 1830.

53 Stat. 199, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 506(c-e), 56 Stat. 959.

Historical Note

References in Text. "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended," referred to in subsec. (e) (1), is classified to Title 11, Bankruptcy.

Section 77(m) of such Act, referred to in subsec. (e) (2), refers to section 77(m) of Act mentioned above and is classified to section 205(m) of Title 11, Bankruptcy.

Section 106(3) of such Act, referred to in subsec. (e) (3), refers to section 106(3) of Act mentioned above and is classified to section 506(3) of Title 11, Bankruptcy.

1942 Amendment. Subsec. (c) amended by Act Oct. 21, 1942, which inserted "savings and loan associations, cooperative banks, and homestead associations."

Subsec. (e) amended by Act Oct. 21, 1942, which incorporated therein subject matter formerly contained in subsec. (f).

Subsec. (f) added by Act Oct. 21, 1942. Former subsec. (f) was made part of subsec. (e) by same act.

Subsec. (g) added by Act Oct. 21, 1942. Former subsec. (g) was redesignated (h).

Subsec. (h), formerly (g), was redesignated (h) by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Amendments of subsecs. (c) and (e-g) by Act Oct. 21, 1942, were made effective by section 506(h) (3)-(5) thereof, as follows:

"(3) The amendment of section 1808 (c) made by subsection (c) of this section shall be applicable to stocks and bonds issued or transferred after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.].

"(4) The amendment of section 1808 (e) and (f) made by subsection (d) of

this section shall be applicable to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, after December 31, 1941, in the case of the amendment of section 1808(e), and after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.], in the case of the amendment of section 1808(f). Section 267 of the National Bankruptcy Act (U. S. C., Title 11, section 667) and any other provision of Federal law insofar as it confers exemption from stamp tax with respect to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, after five years from the date of confirmation or approval of the plan of reorganization or adjustment, shall be inapplicable to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.].

"(5) (A) Section 1808(f) added by subsection (e) of this section shall be applicable to the issuance, transfer, or exchange of securities, or the making or delivery of conveyances, after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.].

"(B) Section 1808(g) as added by subsection (e) of this section shall be applicable to shares and certificates issued after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E. W. T.]."

Transfer of Functions. All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their

performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1280, set out in note under section 78d of Title 15, Commerce and Trade.

Prior Laws. R.S. § 3420 exempted from the stamp tax blank checks, drafts, and orders issued by officers of the United States Government, or officers of States or municipalities.

R.S. § 3436 exempted from stamp tax medicines, compounded according to the United States or other national pharmacopœia.

Medicines prepared according to any standard dispensatory or pharmacopœia in common use by physicians were also exempted from the tax by Act Feb. 8, 1875, c. 36, § 22, 18 Stat. 312.

The schedule of medicinal preparations, perfumeries, cosmetics, etc., designated as Schedule A, followed R.S. § 3437.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1809. Payment of tax

(a) **By whom paid.** The tax imposed by this chapter shall be paid by any person who makes, signs, issues, sells, removes, consigns, or ships any of the documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

(b) Method of payment

(1) **Stamps.** The Commissioner shall cause to be prepared and distributed for the payment of the taxes prescribed in this chapter suitable stamps denoting the tax on the documents, articles, or things to which the same may be affixed.

(2) **Assessment.** All internal revenue laws relating to the assessment and collection of taxes shall be extended to and made a part of this chapter, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

(3) Cross reference

For general provisions relating to assessment and collection, see part II of subchapter A of chapter 28, and chapters 34, 35, and 36.
53 Stat. 200, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 506(f), 56 Stat. 960.

Historical Note

1942 Amendment. Subsec. (a), last sentence, added by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, was made applicable to instruments to which the U. S. or any agency or instrumentality thereof becomes a party after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 506(h) (6) thereof.

Prior Laws. R.S. § 3437, authorized an assessment of unpaid taxes payable by stamps.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBCHAPTER B.—STAMPS

§ 1815. Affixing

The Commissioner shall prescribe such method for the affixing of the stamps prescribed in section 1809(b) (1) in substitution for, or in addition to the method provided in this chapter, as he may deem expedient.
53 Stat. 200.

§ 1816 DOCUMENTS, INSTRUMENTS, ETC.

§ 1816. Cancellation

(a) General rule. Whenever an adhesive stamp is used for denoting any tax imposed by this chapter, except as hereinafter provided, the person using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: *Provided*, That the Commissioner may prescribe such other method for the cancellation of such stamps as he may deem expedient.

(b) Cross reference

For method of canceling stamps in the case of silver sales and transfers, see section 1505.

53 Stat. 201.

Historical Note

Prior Laws. R.S. § 3423, prescribed the manner of canceling the stamps denoting the tax imposed by this chapter.

R.S. § 3424, authorized the Commissioner of Internal Revenue to prescribe methods of canceling such stamps, either as a substitute for, or in addition to, the method prescribed in this chapter.

§ 1817. Supply

(a) Post Office. The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States in all post-offices of the first and second classes and such post offices of the third and fourth classes as are located in county seats. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections.

(b) Designated depository of the United States. Each collector shall furnish, without prepayment, to any designated depository of the United States, located in the district of such collector, a suitable quantity of adhesive stamps to be kept on sale by such designated depository.

(c) State agents. Each collector shall furnish, without prepayment, to any person who is (1) located in the district of such collector, (2) duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and (3) designated by the Commissioner for the purpose, a suitable quantity of such adhesive stamps as are required by section 1802, to be kept on sale by such person. 53 Stat. 201.

Historical Note

Prior Laws. R.S. § 3425, authorized the Commissioner to sell adhesive stamps or stamped paper to collectors and deputies, and to postmasters, stationers, and others.

R.S. § 3427, authorized the Commissioner to supply collectors, assistant

treasurers of the United States, designated depositories, and postmasters with adhesive stamps without prepayment therefor.

R.S. § 3428, authorized the Commissioner to make regulations as to the disposal and safe-keeping of adhesive stamps and stamped paper.

§ 1818. Methods of safeguarding

(a) Bond. In cases coming within the provisions of subsections (b) and (c) of section 1817 the collector may require a bond, with sufficient sureties, in a sum to be fixed by the Commissioner, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand.

(b) **Regulations.** The Secretary may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all the adhesive stamps referred to in section 1817 (b) and (c). 53 Stat. 201.

§ 1819. Cross reference

For general provisions relating to stamps, see part I of subchapter A of chapter 28
53 Stat. 201.

SUBCHAPTER C.—PENALTIES AND FORFEITURES

§ 1820. Underpayment of tax

Whoever—

(a) **Instruments.** Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(b) **Merchandise.** Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. 53 Stat. 201.

Historical Note

Prior Laws. Act June 13, 1898, c. 448, § 13, 30 Stat. 454, as amended by Act March 2, 1901, c. 806, § 7, 31 Stat. 941, penalized any person registering, issuing, etc., any instrument, document, etc., without the same being duly stamped, etc., and made provision for the subsequent affixing of the stamp.

R.S. § 3430 imposed a penalty on a person selling or removing for sale drugs, medicinal preparations, perfumery, cosmetics, etc., matches, and playing cards, without affixing the required

stamp. It was amended by Act March 1, 1879, c. 125, § 19, 20 Stat. 351.

R.S. § 3431, imposed a penalty on a manufacturer of drugs, medicinal preparations, perfumery, cosmetics, etc., matches, and playing cards, removing stamps affixed on such articles.

R.S. § 3432, imposed a penalty on manufacturers selling drugs, medicinal preparations, perfumery, cosmetics, etc., matches and playing cards, without affixing the required stamp.

§ 1821. Nonpayment or evasion of tax

(a) In general

(1) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(3) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612.

(4) The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(b) In particular

(1) **Capital stock sales or transfers.** Any person liable to pay the tax as provided in subsection (b) of section 1802, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, share, interest or right, or bill or memorandum thereof, as required in that subsection, without having the proper stamps affixed thereto, with intent to evade the provisions of such subsection, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

(2) Any person who, with intent to evade the tax provided in subsection (b) of section 1802, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(3) **Insurance policies.** Any person to or for whom or in whose name any insurance policy or other instrument referred to in section 1804 is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such policy or other instrument, shall affix the proper stamps to such policy or other instrument, and for failure to affix such stamps with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

(4) **Silver bullion sales or transfers.** Any person liable for payment of tax under section 1805 (or anyone who acts in the matter as agent or broker for any such person) who is a party to any such transfer, or who in pursuance of any such transfer delivers any silver bullion or interest therein, without a memorandum stating truly and completely the information herein required, or who delivers any such memorandum without having the proper stamps affixed thereto, with intent to evade the provisions of section 1805, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000 or be imprisoned not more than six months, or both.

(5) **Playing cards**

For penalty imposed for failure of manufacturers of playing cards to register, see subsection (c) of section 1831.
53 Stat. 202.

Historical Note

Prior Laws. R.S. § 3422 subjected the party omitting to stamp an instrument required to be stamped to a penalty. It was amended by Act Feb. 18, 1875, c. 80, 18 Stat. 319, and by Act Feb. 27, 1877, c. 69, 19 Stat. 248.

§ 1822. Use of uncanceled stamps

Whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without cancelling or obliterating such stamp as pre-

scribed in section 1816, is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. 53 Stat. 203.

§ 1823. Frauds relating to stamps

Whoever—

(a) **Mutilation or removal.** Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this chapter;

(b) **Use of mutilated, insufficient, and counterfeit stamps.** Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Reuse of stamps

(1) **Preparation for reuse.** Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used;

(2) **Trafficking.** Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(3) **Possession.** Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; shall, upon conviction, be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. 53 Stat. 203.

SUBCHAPTER D.—SPECIAL PROVISIONS APPLICABLE TO PLAYING CARDS

§ 1830. Exemption in case of exportation

Playing cards may be removed from the place of manufacture for export to a foreign country or for shipment to a possession of the United States (or, until the date on which the President proclaims that hostilities in the present war have terminated, to a territory of the United States for the use of members of the military or naval forces of the United States) without payment of tax, or affixing stamps thereto, under such rules and regulations and the filing of such bonds as the Commissioner, with the approval of the Secretary, may prescribe. 53 Stat. 204, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title V, § 508(a), 58 Stat. 73.

Historical Note

1944 Amendment. Act Feb. 25, 1944, amended section by inserting "or for shipment to * * * of the United States)".

Effective Date of 1944 Amendment. Amendment of section by Act Feb. 25, 1944, was made effective as of Jan. 1, 1942, by section 505(b) thereof.

Shipments for Armed Forces. The exemption granted by this section on shipments to United States territories for use

of military or naval forces of United States expired on the termination of hostilities of World War II, proclaimed at 12 o'clock noon of December 31, 1946, by Proc No. 2714, 12 F.R. 1, set out as note under section 601 of Appendix to Title 50, War and National Defense.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 1831. Manufacturers

(a) **Definition.** Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon.

(b) **Registration.** Every manufacturer of playing cards shall register with the collector of the district his name or style, place of residence, trade, or business, and the place where such business is to be carried on.

(c) **Penalty for failure to register.** Every manufacturer of playing cards who fails to register as provided and required in subsection (b) shall be subject to a penalty of \$50. 53 Stat. 204.

§ 1832. Stamps

(a) **Supply.** The stamps on playing cards shall be furnished to the collectors requiring them, and collectors shall, if there be any manufacturers of playing cards within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to such manufacturers as have registered as required by law and to importers of playing cards, who are required to affix the same to imported playing cards.

(b) **Collector's account.** Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer and importer. 53 Stat. 204.

SUBCHAPTER E.—MISCELLANEOUS PROVISIONS

§ 1835. Records, statements, and returns

Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. 53 Stat. 204.

§ 1836. Rules and regulations

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791.
53 Stat. 204.

§ 1837. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 204.

§ 1838. Cross references

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see chapters 28 and 34 to 37, inclusive.
53 Stat. 204.

CHAPTER 12.—SAFE DEPOSIT BOXES

Sec.

- 1850. Tax.
- 1851. Collection of tax by lessor.
- 1852. Returns.
- 1853. Payment of tax.
- 1854. Refunds and credits.
- 1855. Regulations.
- 1856. Applicability of administrative provisions.
- 1857. Definition of safe deposit box.
- 1858. Publicity of returns.
- 1859. Effective date of chapter.

§ 1850. Tax

(a) **Rate.** There shall be imposed a tax equivalent to 10 per centum of the amount collected for the use of any safe deposit box.

(b) **By whom paid.** The tax imposed by subsection (a) shall be paid by the person paying for the use of the safe deposit box. 53 Stat. 205, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 532, 55 Stat. 708; Mar. 31, 1954, c. 126, Title V, § 501, 68 Stat. 42.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which substituted "10 per centum" for "20 per centum".

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which substituted "20 per centum" for "10 per centum."

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of I.R.C.1939.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 538 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

§ 1851. Collection of tax by lessor

(a) **Requirement.** Every person making any collections specified in subsection (a) of section 1850 shall collect the amount of tax imposed by such subsection from the person paying for the use of the safe deposit box.

(b) Cross reference

For provision requiring the amount of tax so collected to be held in a special fund in trust for the United States, see section 3762.
53 Stat. 205.

§ 1852

SAFE DEPOSIT BOXES

§ 1852. Returns

(a) **Requirement.** Every person making any collections specified in subsection (a) of section 1850 shall on or before the last day of each month make a return, under oath, for the preceding month. Such returns shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) **Place for filing.** The return shall be made to the collector for the district in which is located the principal place of business of the person making any collections specified in subsection (a) of section 1850, or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. 53 Stat. 205.

§ 1853. Payment of tax

(a) **Time for payment.** The tax imposed by section 1850 shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

(b) **Place for payment.** The tax shall be paid to the collector for the district in which is located the principal place of business of the person making any collections specified in subsection (a) of section 1850, or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland.

(c) **Addition to the tax in case of delinquency.** If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. 53 Stat. 205.

§ 1854. Refunds and credits

(a) **Allowance.** Credit or refund of any overpayment of tax imposed by section 1850 may be allowed to the person who collected the tax and paid it to the United States if such person establishes, to the satisfaction of the Commissioner, under such regulations as the Commissioner with the approval of the Secretary may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtained the consent of such person to the allowance of such credit or refund.

(b) **Credit on monthly returns.** Any person entitled to refund of tax under section 1850 paid, or collected and paid, to the United States by him may take credit therefor against taxes due upon any monthly return.

(c) **Adjustments for refunded payments.** Any person making a refund of any payment on which tax under section 1850 has been collected, may repay therewith the amount of tax collected on such payment, and the amount of tax so repaid may be credited against the tax under any subsequent return. 53 Stat. 206.

§ 1855. Regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 206.

§ 1856. Applicability of administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 1700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the tax imposed by section 1850. 53 Stat. 206.

§ 1857. Definition of safe deposit box

For the purposes of this chapter any vault, safe, box, or other receptacle, of not more than 40 cubic feet capacity, used for the safe-keeping or storage of jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers of any kind, or other valuable personal property, shall be regarded as a safe deposit box. 53 Stat. 206.

§ 1858. Publicity of returns

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.
53 Stat. 206.

§ 1859. Effective date of chapter

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 206.

CHAPTER 13.—CIRCULATION OTHER THAN OF NATIONAL BANKS

Sec.

- 1900. Rate of tax.
- 1901. Exemption from tax.
- 1902. Returns and payment of tax.
- 1903. Estimation of outstanding circulation in default of return.
- 1904. Penalty for refusal or neglect to make return or payment.
- 1905. Definition of bank or banker.
- 1906. Application of chapter to national banks.
- 1907. Effective date of chapter.

§ 1900. Rate of tax

(a) Average circulation outstanding. There shall be levied, collected, and paid—

(1) Entire circulation. A tax of one-twelfth of 1 per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and

(2) Circulation exceeding ninety per centum of capital. An additional tax of one-sixth of 1 per centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of 90 per centum of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

(b) Circulation paid out

(1) Own circulation. Every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of 10 per centum on the amount of their own notes used for circulation and paid out by them.

(2) Other circulation. Every such person, firm, association, corporation, State bank, or State banking association, and also every national

banking association, shall pay a like tax of 10 per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them. 53 Stat. 207.

§ 1901. Exemption from tax

(a) **Circulation reduced to not over five per centum of capital.** Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding 5 per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and

(b) **Circulation under redemption in whole.** Whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary shall prescribe, it shall be exempt from any tax upon such circulation.

(c) **Circulation of insolvent banks**

For exemption in case of insolvent banks, see section 3798.
53 Stat. 207.

§ 1902. Returns and payment of tax

(a) **Circulation outstanding**

(1) **Time for making return.** A true and complete return of the monthly amount of circulation as aforesaid for the previous six months shall be made and rendered in duplicate on the 1st day of December, and the 1st day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and

(2) **To whom return made.** One copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner.

(3) **Calculation and time for payment of tax.** The taxes provided in section 1900(a) shall be paid semi-annually, on the 1st day of January and the 1st day of July; but the same shall be calculated at the rate per month as prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

(4) **Return and payment when State bank converted into national bank.** Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed 5 per centum of the capital before such conversion of such State bank or banking association.

(b) **Circulation paid out.** The amount of circulating notes referred to in section 1900(b), and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties

for failure to return and pay the same, as provided by law for the return and payment of taxes on circulation imposed by subsection (a) of that section. 53 Stat. 208.

§ 1903. Estimation of outstanding circulation in default of return

In default of the returns provided in section 1902, the amount of circulation and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner, upon the best information he can obtain. 53 Stat. 208.

§ 1904. Penalty for refusal or neglect to make return or payment

For any refusal or neglect to make return and payment, any bank, association, corporation, company, or person in default as described in the preceding section, shall pay a penalty of \$200, besides the additional penalty and forfeitures provided in other cases. 53 Stat. 208.

§ 1905. Definition of bank or banker

Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker. 53 Stat. 209.

§ 1906. Application of chapter to national banks

The provisions of this chapter, relating to the tax on the circulation of banks, and to their returns, except as contained in sections 1900(b) (2), 1901(a) and (b), 1902(a) (4), and such parts of sections 1902(a) (1) and (2) and (b), 1903, and 1904 as relate to the tax of 10 per centum on certain notes, shall not apply to associations which are taxed as national banks. 53 Stat. 209.

§ 1907. Effective date of chapter

This chapter shall take effect on the first day of June or the first day of December, whichever occurs first, next after the enactment of this title. 53 Stat. 209.

CHAPTER 14.—COTTON FUTURES

Sec.

- 1920. Tax.
- 1921. Exemption of spot cotton.
- 1922. Exemption of basis grade contracts.
- 1923. Exemption of tendered grade contracts.
- 1924. Exemption of specific grade contracts.
- 1925. Form and validity of contracts.
- 1926. Cotton standards.
- 1927. Bona fide spot markets.
- 1928. Collection and enforcement.
- 1929. Penalties.
- 1930. Immunity of witnesses.
- 1931. Definitions.
- 1932. Liability of principal for acts of agent.
- 1933. Reports of Secretary of Agriculture.
- 1934. Other laws applicable.
- 1935. Operation of State laws.

§ 1920. Tax

(a) **Rate.** Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there shall be levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

(b) **By whom paid.** The tax imposed by subsection (a) shall be paid by the seller of the cotton involved in the contract of sale.

(c) **How paid.** The tax imposed by subsection (a) shall be paid by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury.

(d) Cross reference

For authority of the Secretary of the Treasury to promulgate rules and regulations for the collection of the tax, see section 1928(a).

53 Stat. 210.

§ 1921. Exemption of spot cotton

This chapter shall not be construed to impose a tax on any sale of spot cotton. 53 Stat. 210.

§ 1922. Exemption of basis grade contracts

(a) **Conditions.** No tax shall be levied under this chapter on any contract of sale mentioned in section 1920(a) if the contract comply with each of the following conditions:

(1) **Conformity with section 1925(a) and regulations.** Conform to the requirements in section 1925(a) of, and the rules and regulations made pursuant to, this chapter.

(2) **Specification of grade, price, dates of sale and settlement.** Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract

if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(3) **Provision for delivery of standard grades only.** Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection and no other grade or grades.

(4) **Provision for settlement on basis of actual commercial differences.** Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(5) **Prohibition of delivery of inferior cotton.** Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

(6) **Provisions for tender in full, notice of delivery date, and certificate of grade.** Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered, and, by means of marks or numbers, identifying each bale with its grade.

(7) **Provision for tender and settlement in accordance with government classification.** Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this paragraph. The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of this paragraph, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this paragraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(b) **Incorporation of conditions in contracts.** The provisions of the third, fourth, fifth, sixth, and seventh paragraphs of subsection (a) shall be deemed fully incorporated into any such contract if there be written

or printed thereon, or on the memoranda evidencing the same, at or prior to the time the same is signed, the phrase "subject to Internal Revenue Code, section 1922."

(c) **Delivery allowances.** For the purposes of this section the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth paragraph of subsection (a), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purpose of this subsection such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. 53 Stat. 210.

§ 1923. Exemption of tendered grade contracts

(a) **Conditions.** No tax shall be levied under this chapter on any contract of sale mentioned in section 1920 (a) if the contract—

(1) **Compliance with section 1922.** Comply with all the terms and conditions of section 1922 not inconsistent with this section; and

(2) **Provision for contingent specific performance.** Provide that, in case of cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(b) **Incorporation of conditions in contract.** Contracts made in compliance with this section shall be known as "Section 1923 Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 1923."

(c) **Application of section.** Nothing in this section shall be so construed as to relieve from the tax levied by section 1920 (a) of this chapter any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this chapter. 53 Stat. 212.

§ 1924. Exemption of specific grade contracts

(a) **Conditions.** No tax shall be levied under this chapter on any contract of sale mentioned in section 1920 (a) if the contract comply with each of the following conditions:

(1) **Conformity with rules and regulations.** Conform to the rules and regulations made pursuant to this chapter.

(2) **Specification of grade, price, dates of sale and delivery.** Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(3) **Prohibition of delivery of other than specified grade.** Provide that cotton of or within the grade or of the type, or according to the sample or description specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(4) **Provision for specific performance.** Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(b) **Incorporation of conditions in contract.** The provisions of the first, third, and fourth paragraphs of subsection (a) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "subject to Internal Revenue Code, section 1924."

(c) **Application of section.** This section shall not be construed to apply to any contract of sale made in compliance with section 1922 or section 1923. 53 Stat. 212.

§ 1925. Form and validity of contracts

(a) **Form.** Each contract of sale of cotton for future delivery mentioned in section 1920(a) of this chapter shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this chapter, be deemed to weigh five hundred pounds.

(b) **Validity.** No contract of sale of cotton for future delivery mentioned in section 1920(a) of this chapter, which does not conform to the requirements of subsection (a) and has not the necessary stamps affixed thereto as required by section 1920(c) shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. 53 Stat. 213.

§ 1926. Cotton standards

(a) **Source and description.** Subject to the provisions of section 6 of the Act of March 4, 1923, 42 Stat. 1518 (U.S.C., Title 7, § 56), the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this chapter shall be known as the "Official cotton standards of the United States": *Provided*, That any standard of any cotton established and promulgated under this chapter by the Secretary of Agriculture shall not be changed

or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further*, That no change or replacement of any standard of any cotton established and promulgated under this chapter by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when same is to become effective.

(b) **Practical forms**

(1) **Preparation, certification, and distribution.** The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

(2) **Disposition of receipts from sales.** All sums collected by the Secretary of Agriculture for furnishing practical forms under paragraph (1) shall be deposited and covered into the Treasury as miscellaneous receipts. 53 Stat. 213.

§ 1927. **Bona fide spot markets**

(a) **Definition.** For the purposes of this chapter the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(b) **Determination.** In determining, pursuant to the provisions of this chapter, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section 1922(c) of this chapter, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section 1922(a) and (b) shall be determined in compliance with such rules and regulations: *Provided further*, That it shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. 53 Stat. 214.

§ 1928. Collection and enforcement

(a) **Rules and regulations.** The Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this chapter and otherwise to enforce its provisions.

(b) **Records and returns.** Further to effect the purpose of subsection (a), the Secretary shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section 1920 (a) of this chapter, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section 1920 (a) of this chapter to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and

(c) **Employment of agents.** He may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this chapter and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. 53 Stat. 214.

§ 1929. Penalties**(a) In general**

(1) **Nonpayment or evasion of tax.** Any person liable to the payment of any tax imposed by this chapter who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) **Other violations.** Any person who otherwise violates any provision of this chapter, or any rule or regulation made in pursuance hereof, upon conviction thereof, shall be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court.

(b) **Additional.** In addition to the foregoing punishment there shall be imposed, on account of each violation of this chapter, a penalty of \$2,000, to be recovered in an action founded on this chapter in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this chapter is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

(c) **Withholding information.** Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 1927(b), or who shall willfully give any answer that is false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$500. 53 Stat. 215.

§ 1930. Immunity of witnesses

No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this chapter shall withhold his testimony because of complicity by him in any violation of this chapter or of any regulation made pursuant to

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this chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. 53 Stat. 215.

§ 1931. Definitions

(a) Contract of sale. For the purposes of this chapter the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

(b) Person. The word "person" wherever used in this chapter, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. 53 Stat. 215.

§ 1932. Liability of principal for acts of agent

When construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. 53 Stat. 215.

§ 1933. Reports of Secretary of Agriculture

The Secretary of Agriculture is directed to publish from time to time the results of investigations made in pursuance of this chapter. 53 Stat. 216.

§ 1934. Other laws applicable

The provisions of the internal revenue laws of the United States, so far as applicable, including section 3615 of this title, shall be extended, and made to apply, to this chapter. 53 Stat. 216.

§ 1935. Operation of State laws

The payment of any tax levied by this chapter shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this chapter be held to prohibit any State or municipality from imposing a tax on the same transaction. 53 Stat. 216.

CHAPTER 15.—TOBACCO, SNUFF, CIGARS, AND CIGARETTES

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SUBCHAPTER A.—RATE AND PAYMENT OF TAX

§ 2000. Rate of tax

(a) **Tobacco and snuff.** Upon all tobacco and snuff manufactured in or imported into the United States, and sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

(1) **Snuff.** On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of 10 cents per pound.

(2) **Tobacco.** On all chewing and smoking tobacco, fine-cut, cavendish, plug or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of 10 cents per pound.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported tobacco and snuff.

(b) **Snuff flour.** Snuff flour, when sold, or removed for use or consumption, shall be taxed as snuff.

(c) **Cigars and cigarettes.** Upon cigars and cigarettes manufactured in or imported into the United States, which are sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

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TOBACCO, SNUFF, CIGARS, ETC.

(1) Cigars. On cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 75 cents per thousand;

On cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at not more than $2\frac{1}{2}$ cents each, \$2.50 per thousand;

If manufactured or imported to retail at more than $2\frac{1}{2}$ cents each and not more than 4 cents each, \$3.00 per thousand;

If manufactured or imported to retail at more than 4 cents each and not more than 6 cents each, \$4.00 per thousand;

If manufactured or imported to retail at more than 6 cents each and not more than 8 cents each, \$7.00 per thousand;

If manufactured or imported to retail at more than 8 cents each and not more than 15 cents each, \$10.00 per thousand;

If manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$15.00 per thousand;

If manufactured or imported to retail at more than 20 cents each, \$20.00 per thousand.

Whenever in this subsection reference is made to cigars manufactured or imported to retail at not over a certain price each, then in determining the tax to be paid regard shall be had to the ordinary retail price of a single cigar in its principal market.

(2) Cigarettes

On cigarettes made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, \$4 per thousand until April 1, 1955, and \$3.50 per thousand on and after April 1, 1955;

Weighing more than three pounds per thousand, \$8.40 per thousand; except that if more than $6\frac{1}{2}$ inches in length they shall be taxable at the rate provided in the preceding paragraph, counting each $2\frac{3}{4}$ inches (or fraction thereof) of the length of each as one cigarette.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported cigars and cigarettes.

(d) Cigarette paper. There shall be levied, collected, and paid upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and sold by the manufacturer or importer to any person (other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes), the following taxes:

On each package, book, or set containing more than twenty-five but not more than fifty papers, $\frac{1}{2}$ cent;

Containing more than fifty but not more than one hundred papers, 1 cent;

Containing more than one hundred papers, $\frac{1}{2}$ cent for each fifty papers or fractional part thereof; and

Upon tubes, 1 cent for each fifty tubes or fractional part thereof.

(e) 1942 Floor stocks tax

(1) Tax. Upon large cigars (weighing more than three pounds per thousand) and all cigarettes subject to tax under this section, which on the effective date of Title VI of the Revenue Act of 1942 are held by any person for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such articles by the Revenue Act of 1942.

(2) Returns. Every person required by this subsection to pay any floor stocks tax shall, on or before the end of the month next following the month in which Title VI of the Revenue Act of 1942 takes effect, under

such regulations as the Commissioner with the approval of the Secretary shall prescribe, make a return and pay such tax, except that in the case of such articles held by manufacturers and importers, the Commissioner may collect the tax with respect to all or part of such articles by means of stamps rather than return, and in such case may make an assessment against such manufacturer or importer having cigar and cigarette tax stamps on hand on the effective date of Title VI of the Revenue Act of 1942, for the difference between the amount paid for such stamps and the increased rates imposed by the Revenue Act of 1942.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 2000, shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by this subsection.

(f) 1951 Floor stocks tax

(1) **Tax.** Upon cigarettes subject to tax under this section weighing not more than three pounds per thousand, which on the effective date of section 421 of the Revenue Act of 1951 are held by any person for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such cigarettes by the Revenue Act of 1951.

(2) **Returns.** Every person required by this subsection to pay any floor stocks tax shall, on or before the end of the month next following the month in which section 421(a) of the Revenue Act of 1951 takes effect, under such regulations as the Secretary shall prescribe, make a return and pay such tax, except that in the case of such cigarettes held by manufacturers and importers, the Secretary may collect the tax with respect to such cigarettes by means of stamps rather than return, and in such case may make an assessment against such manufacturer or importer having cigarette tax stamps on hand on the effective date of such section for the difference between the amount paid for such stamps and the increased rate imposed by such section.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 2000, shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by this subsection.

(g) Floor stocks refunds on cigarettes

(1) **In general.** With respect to cigarettes, weighing not more than three pounds per thousand, upon which the tax imposed by subsection (c) (2), or upon which floor stocks tax imposed by subsection (f), has been paid, and which, on April 1, 1955, are held by any person and intended for sale, or are in transit from foreign countries or insular possessions of the United States to any person in the United States for sale, there shall be credited or refunded to such person (without interest), subject to such regulations as may be prescribed by the Secretary, an amount equal to the difference between the tax paid on such cigarettes and the tax made applicable to such articles on April 1, 1955, if claim for such credit or refund is filed with the Secretary prior to July 1, 1955.

(2) **Limitations on eligibility for credit or refund.** No person shall be entitled to credit or refund under paragraph (1) unless (A) such person, for such period or periods both before and after April 1, 1955 (but not extending beyond one year thereafter), as the Secretary shall by regulations prescribe, makes and keeps, and files with the Secretary such records of inventories, sales, and purchases as may be prescribed in such regulations; and (B) such person establishes to the satisfaction of the Secretary, with respect to the cigarettes for which credit or refund is claimed by him under this section, that on and after April 1, 1955, and until the expiration of three months thereafter, the price at which ciga-

rettes of such class were sold (until a number equal at least to the number on hand on April 1, 1955, were sold) reflected, in such manner as the Secretary may by regulations prescribe, the amount of the tax reduction.

(3) **Penalty and administrative procedures.** All provisions of law, including penalties, applicable in respect of internal revenue taxes on cigarettes shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the credits and refunds provided for in this subsection to the same extent as if such credits or refunds constituted credits or refunds of such taxes. 53 Stat. 219, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (8), 55 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 605(a-c), 56 Stat. 974; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 421(a), 422, 423 (a), 65 Stat. 521; Mar. 31, 1954, c. 126, Title VI, § 601(a) (7), (b) (3), 68 Stat. 45, 46.

Historical Note

References in Text. The effective date of Title VI of the Revenue Act of 1942, referred to in subsec. (e) (1), (2), was the first day of the first month which began more than 10 days after Oct. 21, 1942.

The effective date of section 421 of the Revenue Act of 1951, referred to in subsec. (f) (1), (2), was Nov. 1, 1951.

1954 Amendment. Subsec. (c) (2) amended by Act Mar. 31, 1954, § 601(a) (7) which in first par. substituted "April 1, 1955" for "April 1, 1954" in two places.

Subsec. (g) (1) amended by Act Mar. 31, 1954, § 601(b) (3), which substituted "April 1, 1955" for "April 1, 1954" in two places, and substituted "July 1, 1955" for "July 1, 1954".

Subsec. (g) (2) amended by Act Mar. 31, 1954, § 601(b) (3), which substituted "April 1, 1955" for "April 1, 1954" in three places.

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 423(a), to reduce tax on tobacco and snuff from 18 cents per pound to 10 cents per pound.

Subsec. (c) (2) amended by Act Oct. 20, 1951, § 421(a), to insert "\$4 per thousand until April 1, 1954, and \$3.50 per thousand on and after April 1, 1954" in lieu of "\$3.50 per thousand".

Subsecs. (f) and (g) added by Act Oct. 20, 1951, § 422.

1942 Amendment. Subsecs. (c) (1) and (2) amended and subsec. (e) added by Act Oct. 21, 1942.

1941 Amendment. Subsec. (c) (2) amended by Act Sept. 20, 1941, which substituted "\$3.25" and "\$7.80" for "\$3" and "\$7.20", respectively.

Effective Date of 1951 Amendment. Amendments of subsecs. (a) and (c) (2) made effective Nov. 1, 1951, by sections 423(b) and 421(b), respectively, of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Articles in Foreign Trade Zones at Time of Tax Increase. Section 496 of Act Oct. 20, 1951 provided that:

"(a) Imported articles. Upon all articles specified in section 2000(c) (2), 2800 (a), 3030(a), or 3150(a) of the Internal Revenue Code [sections 2000(c) (2), 2800 (a), 3030(a), or 3150(a) of I.R.C.1939] on which the internal revenue taxes imposed by law have been determined, pursuant to section 3 of the Act of June 18, 1934, as amended (U.S.C.A., title 19, sec. 81c), prior to the effective date of the rates of tax imposed on such articles by this Act, and which on or after such effective date are brought from foreign trade zones into customs territory of the United States, there shall be levied, assessed, collected, and paid on such articles, in addition to the tax so determined, an additional tax at rates equal to the increases in rates of tax made applicable to such articles by this Act. The tax imposed by this subsection shall be collected, paid, and accounted for at the same time and in the same manner as tax on such article is collected, paid, and accounted for when brought from the foreign trade zone into the customs territory.

"(b) Previously taxpaid articles. Upon all taxpaid articles specified in section 2000(c) (2), 2800(a), 3030(a), or 3150(a) of the Internal Revenue Code [section 2000 (c) (2), 2800(a), 3030(a), or 3150(a) of I.R.C.1939] which have been taken into foreign trade zones from the customs territory of the United States and placed under the supervision of the collector of customs, pursuant to the second proviso of section 3 of the Act of June 18, 1934, as amended (U.S.C.A., title 19, sec. 81c), prior to the effective date of the rates of tax imposed on such articles by this Act, and which on or after such effective date are (without loss of identity) returned from foreign trade zones to customs territory of the United States, there shall be levied, assessed, collected, and paid on such articles an

additional tax at rates equal to the increases in rates of tax made applicable to such articles by this Act. The tax imposed by this subsection on any article shall be collected, paid, and accounted for at the same time and in the same manner as if such article had been taken into the foreign trade zone free of tax."

For effective date of amendments to sections 2000(c) (2), 2800(a), 3030(a) and 3150(a) by Act Oct. 20, 1951, referred to above, see note under this section, and note under section 1650 of I.R.C.1939.

Tax Refunds on Articles Brought in from Foreign Trade Zones after April 1, 1955. Section 497 of Act Oct. 20, 1951, as amended Mar. 31, 1954, c. 126, Title VI, § 601(b) (5), 68 Stat. 46, provided that:

"(a) Imported articles. With respect to any article specified in section 2000(c) (2), 2800(a), 3030(a), or 3150(a) of the Internal Revenue Code [section 2000(c) (2), 2800(a), 3030(a), or 3150(a) of I.R.C. 1939] on which internal revenue tax at the applicable rate prescribed in such section has been determined pursuant to section 3 of the Act of June 18, 1934, as amended (U.S.C.A., title 19, sec. 81c), prior to April 1, 1955, and which on or after such date is brought from a foreign trade zone into customs territory of the United States and the tax so determined thereon paid, there shall be credited or refunded (without interest) to the taxpayer, subject to such regulations as may be prescribed by the Secretary, an amount equal to the difference between the tax so paid and the amount of tax made applicable to such articles on and after April 1, 1955, if claim for such credit or refund is filed with the Secretary within thirty days after payment of the tax.

"(b) Previously taxpaid articles. With respect to any article specified in sec-

tion 2000(c) (2), 2800(a), 3030(a), or 3150(a) of the Internal Revenue Code [section 2000(c) (2), 2800(a), 3030(a), or 3150(a) of I.R.C.1939], upon which internal revenue tax (including floor stocks tax) at the applicable rate prescribed in such section has been paid, and which was taken into a foreign trade zone from the customs territory of the United States and placed under the supervision of the collector of customs, pursuant to the second proviso of section 3 of the Act of June 18, 1934, as amended (U.S.C.A., title 19, sec. 81c), prior to April 1, 1955, and which on or after such date is (without loss of identity) returned from a foreign trade zone to customs territory of the United States, there shall be credited or refunded (without interest) to the person so returning such article, subject to such regulations as may be prescribed by the Secretary, an amount equal to the difference between the tax so paid and the amount of tax made applicable to such articles on and after April 1, 1955, if claim for such credit or refund is filed with the Secretary within thirty days after the return of the article to customs territory."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm. News, p. 2055. See, also, Act Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 2001. Taxpayer

(a) **Manufacturer or importer.** The taxes imposed by section 2000 shall be paid by the manufacturer or importer.

(b) **Manufacturer on commission, shares, or contract**

(1) **Tobacco and snuff.** Whenever tobacco or snuff of any description is manufactured, in whole or in part, upon commission or shares, or the material from which any such articles are made, or are to be made, is furnished by one person and made and manufactured by another, or the material is furnished or sold by one person with an understanding or agreement with another that the manufactured article is to be received in payment therefor or for any part thereof, the stamps required by law shall be affixed by the actual maker or manufacturer before the article passes from the place of making or manufacturing.

(2) **Cigars and cigarettes.** Whenever cigars or cigarettes of any description are manufactured, in whole or in part, upon commission or shares, or the material is furnished by one party and manufactured by another, or the material is furnished or sold by one party with an understanding or agreement with another that the cigars or cigarettes are to be received in payment therefor, or for any part thereof, the stamps required by law shall be affixed by the actual maker before the cigars or cigarettes are removed from the place of manufacturing. 53 Stat. 220.

§ 2002

TOBACCO, SNUFF, CIGARS, ETC.

§ 2002. Payment of tax

(a) Stamp

(1) **Tobacco and snuff.** The Commissioner shall cause to be prepared suitable and special stamps for the payment of the tax on tobacco and snuff, which shall indicate the weight and class of the article on which payment is to be made.

(2) **Snuff flour.** Snuff flour, when sold or removed for use or consumption, shall be stamped in the same manner as snuff.

(3) **Cigars and cigarettes.** The Commissioner shall cause to be prepared, for payment of the tax upon cigars and cigarettes, suitable stamps denoting the tax thereon.

(b) Assessment

(1) **Tobacco, snuff, cigars, and cigarettes.** Whenever any manufacturer of tobacco, snuff, cigars, or cigarettes sells, or removes for sale or consumption, any tobacco, snuff, cigars, or cigarettes, upon which a tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal: *Provided, however,* That no such assessment shall be made until and after notice to the manufacturer of the alleged sale and removal to show cause against said assessment; and the Commissioner shall, upon a full hearing of all the evidence, determine what assessment, if any, should be made.

(2) Snuff flour

For provision taxing snuff flour as snuff, see section 2000(b).

(c) **Other methods.** Whether or not the method of collecting any tax imposed by section 2000 is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. 53 Stat. 220.

§ 2003. Cross references

(a) Tax on leaf tobacco

For tax on leaf tobacco unlawfully sold, removed, or shipped, see section 2060.

(b) Exemption and drawback

For exemption and drawback in case of exportation, see sections 2135 and 2136. 53 Stat. 221.

§ 2004. Defense tax for five years

In lieu of the rates of tax specified in section 2000(c) (2), the rates of tax for the period after June 30, 1940, and before July 1, 1945, shall be \$3.25 and \$7.80, respectively. Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 212, 54 Stat. 524.

Historical Note

Termination of Rates. Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, §§ 521(b), 536, 550(a), 55 Stat. 708, 710, 715, provided for the termination of the applicability of the rates specified in this section as follows:

"[§ 521.] (b) The rates specified in subsection (a) [of Act Sept. 20, 1941, § 521, affecting sections 1700, 1801, 1802, 1804, 1806, 2000, 2700, 3150, 3250, 3407, 3411, 3412, 3413, 3460, 3481, and 3482 of I.R.C.1939] shall be applicable only with

respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a), section 2004, and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period."

"[§ 538.] The amendments made by this Part [Act Sept. 20, 1941, Title V, Part III, §§ 531-536, affecting sections 1507, 1850, 2800, 2887, 3030, 3192, and 3400 of I.R.C.1939] shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period.

This Part shall take effect on October 1, 1941."

"[§ 550.] (a) The amendments made by this Part [Act Sept. 20, 1941, Title V, Part IV, §§ 541-550, affecting I.R.C.1939 §§ 1700, 1701, 1710, 1712, 1715, 1716, 3403, 3404, 3405, 3409, 3441, 3465, 3486; and Title 16, Conservation, §§ 18, 407d] shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code [1939] shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

§ 2005. Floor stocks tax

(a) **Floor stocks tax.** Upon cigarettes subject to tax under section 2000 (c) (2) which on July 1, 1940, are held by any person for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such articles by section 2004.

(b) **Returns.** Every person required by this section to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner with the approval of the Secretary shall prescribe, make a return and pay such tax, except that in the case of articles held by manufacturers and importers the Commissioner may collect the tax with respect to all or part of such articles by means of stamp rather than return, and in such case may make an assessment against such manufacturer or importer having tobacco tax stamps on hand July 1, 1940, for the difference between the amount paid for such stamps and the increased rates specified in section 2004.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 2000 shall, insofar as applicable and not inconsistent with this section, be applicable with respect to the floor stocks tax imposed by subsection (a). Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 212, 54 Stat. 524.

SUBCHAPTER B.—MANUFACTURERS, DEALERS, AND PEDDLERS

PART I.—DEFINITION AND REQUIREMENTS OF TOBACCO AND SNUFF MANUFACTURERS

§ 2010. Definition

(a) "Manufacturer of tobacco"

(1) **Manufacturer of tobacco or snuff.** Every person whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf tobacco, tobacco stems, scraps, clippings, or waste, by sifting, twisting, screening, or any other process, shall be regarded as a manufacturer of tobacco.

(2) **Sellers of leaf tobacco.** Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hoghead, case, or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or

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duly registered manufacturers of tobacco, snuff, cigars, or cigarettes, or to persons who purchase in packages for export.

(b) **Farmers and growers.** Farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco. 53 Stat. 221.

§ 2011. Registration

Every manufacturer of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. 53 Stat. 222.

§ 2012. Statement

Every person before commencing the manufacture of tobacco or snuff, shall furnish, without previous demand therefor, to the collector of the district where the manufacture is to be carried on, a statement in duplicate, subscribed under oath, setting forth the place, and if in a city, the street and number of the street, where the manufacture is to be carried on; the number of cutting-machines, presses, snuff-mills, hand-mills, or other machines; the name, kind, and quality of the article manufactured or proposed to be manufactured; and when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered. 53 Stat. 222.

§ 2013. Bond

Every person, before commencing the manufacture of tobacco or snuff, shall give a bond, to be approved by the collector of the district, in the sum of not less than \$2,000 nor more than \$20,000, to be fixed by the collector of the district, according to the quantum of business proposed to be done by the manufacturer, with right of appeal by the manufacturer to the Commissioner in respect to the amount of said bond, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render truly and completely all the returns, statements, and inventories prescribed by law or regulations; that whenever he adds to the number of cutting-machines, presses, snuff-mills, hand-mills, or other mills or machines enumerated in the statement required under section 2012, he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all tobacco and snuff manufactured by him before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any manufactured tobacco or snuff which has not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of tobacco or snuff. Additional sureties may be required by the collector from time to time. 53 Stat. 222.

§ 2014. Certificate

Every manufacturer of tobacco shall obtain a certificate from the collector of the district, who is directed to issue the same, setting forth the kind and number of machines, presses, snuff-mills, hand-mills, or other mills and machines enumerated in the statement required under section 2012; which certificate shall be posted in a conspicuous place within the manufactory. 53 Stat. 222.

§ 2015. Sign

Every manufacturer of tobacco shall place and keep on the side or end of the building wherein his business is carried on, so that it can be dis-

tinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. 53 Stat. 222.

§ 2016. Factory number

Every collector shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner. 53 Stat. 222.

§ 2017. Inventory

Every person engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff flour, snuff, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the 1st of January; setting forth what portion of said goods and materials, and what kinds were manufactured and produced by him and what was purchased from others. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory, and shall verify the fact of such examination by oath, to be indorsed on or affixed to the inventory. 53 Stat. 223.

§ 2018. Books

Every person engaged in the manufacture of tobacco or snuff shall keep a book or books, the forms of which shall be prescribed by the Commissioner, and enter therein daily an accurate account of all the articles referred to in section 2017 purchased by him, the quantity of tobacco, snuff, and snuff-flour, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other material, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture in bond, and to what district removed; also the number of net pounds of lumps of plug tobacco made in the lump-room, and the number of packages and pounds thereof produced in the pressroom each day. 53 Stat. 223.

§ 2019. Monthly abstracts

Every person engaged in the manufacture of tobacco or snuff, shall on or before the 10th day of each month, furnish to the collector a true and complete abstract from the book required under section 2018 to be kept, verifying the same by his oath, of all such purchases, sales, and removals made during the month next preceding. 53 Stat. 223.

§ 2020. Cross reference

For packing and selling requirements, see subchapter C.
53 Stat. 223.

PART II.—DEFINITION AND REQUIREMENTS OF CIGAR AND CIGARETTE MANUFACTURERS

§ 2030. Definition

Every person whose business it is to make or manufacture cigars or cigarettes for himself, or who employs others to make or manufacture cigars or cigarettes, shall be regarded as a manufacturer of cigars or cigarettes, respectively. 53 Stat. 223.

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§ 2031. Registration

Every manufacturer of cigars or cigarettes shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. 53 Stat. 223.

§ 2032. Statement

Every person before commencing the manufacture of cigars or cigarettes, shall furnish, without previous demand therefor, to the collector of the district a statement in duplicate, under oath, setting forth the place, and, if in a city, the street and number of the street, where the manufacture is to be carried on; and when the same are to be manufactured for, or to be sold and delivered to, any other person, the name and residence and business or occupation of the person for whom they are to be manufactured, or to whom they are to be delivered. 53 Stat. 223.

§ 2033. Bond

Every person before commencing the manufacture of cigars or cigarettes, shall give bond, in conformity with the provisions of this chapter, in such penal sum as the collector may require, not less than \$100, and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector, or under the instructions of the Commissioner. Said bond shall be conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render correctly all the returns, statements, and inventories prescribed; that he shall stamp, in accordance with law, all cigars or cigarettes manufactured by him before he offers the same or any part thereof for sale, and before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any cigars or cigarettes which have not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of cigars or cigarettes. 53 Stat. 224.

§ 2034. Sign

Every cigar or cigarette manufacturer shall place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. 53 Stat. 224.

§ 2035. Factory number

Every collector shall cause the several manufactories of cigars or cigarettes in his district to be numbered consecutively, which number shall not thereafter be changed. 53 Stat. 224.

§ 2036. Inventory

Every person engaged in the manufacture of cigars or cigarettes shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner, of the quantity of leaf tobacco, cigars, cigarettes, stems, scraps, clippings, and waste, and of the number of cigar and cigarette boxes and the capacity of each box, held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the 1st of January; setting forth what portion and kinds of said goods were manufactured or produced by him, and what were purchased from others, and shall verify said inventory by his oath indorsed thereon. The collector shall make personal examination of the stock

sufficient to satisfy himself as to the correctness of the inventory; and shall verify the fact of such examination by oath to be indorsed on the inventory. 53 Stat. 224.

§ 2037. Books

Every person engaged in the manufacture of cigars or cigarettes shall enter daily in a book, the form of which shall be prescribed by the Commissioner, an accurate account of all the articles enumerated in section 2036 purchased by him, the quantity of leaf-tobacco, cigars, cigarettes, stems, cigar or cigarette boxes, of whatever description, manufactured, sold, consumed or removed for consumption or sale, or removed from the place of manufacture. 53 Stat. 224.

§ 2038. Monthly abstracts

Every person engaged in the manufacture of cigars or cigarettes shall, on or before the tenth day of each and every month, furnish to the collector of the district a true and accurate abstract from the book required under section 2037 verified by his oath, of all such purchases, sales, and removals made during the month next preceding. 53 Stat. 224.

§ 2039. Additional requirements on cigarette manufacturers purchasing cigarette tubes

Every manufacturer of cigarettes purchasing any cigarette paper made up into tubes shall—

(a) **Bond.** Give bond in an amount and with sureties satisfactory to the Commissioner that he will use such tubes in the manufacture of cigarettes or pay thereon a tax equivalent to the tax imposed by section 2000(d); and

(b) **Records and returns.** Keep such records and render under oath such returns as the Commissioner finds necessary to show the disposition of all tubes purchased or imported by such manufacturer of cigarettes. 53 Stat. 225.

§ 2040. Purchases of leaf tobacco from other manufacturers or dealers

It shall be lawful for any licensed manufacturer of cigars or cigarettes to purchase leaf tobacco of any other licensed manufacturer or dealer in quantities less than the original package, for use in his own manufactory exclusively. 53 Stat. 225.

PART III.—DEFINITION AND REQUIREMENTS OF DEALERS IN LEAF TOBACCO

§ 2050. Definition

(a) **General.** Every person shall be regarded as a dealer in leaf tobacco, whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf tobacco.

(b) **Farmers, growers, and cooperative associations.** A farmer or grower of tobacco or a tobacco growers' cooperative association shall not be regarded as a dealer in leaf tobacco in respect to the leaf tobacco produced by him or handled by such association: *Provided*, That such cooperative associations shall be required to keep available records of all purchases and sales of tobacco, such records to be open to inspection by the agents of the Government. As used in this subsection the term "tobacco growers' cooperative association" means an association of farmers or growers of tobacco organized and operated as sales agent for the purpose of marketing the tobacco produced by its members and turning

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back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity and quality of tobacco furnished by them. 53 Stat. 225.

§ 2051. Registration

Every dealer in leaf tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. 53 Stat. 225.

§ 2052. Statement of location of business and places of storage

Every dealer in leaf tobacco shall file with the collector of the district in which his business is carried on a statement in duplicate, subscribed under oath, setting forth the place, and, if in a city, the street and number of the street, where his business is to be carried on, and the exact location of each place where leaf tobacco is held by him on storage, and, whenever he adds to or discontinues any of his leaf tobacco storage places, he shall give immediate notice to the collector of the district in which he is registered. 53 Stat. 225.

§ 2053. Bond

Every dealer in leaf tobacco shall give a bond with surety, satisfactory to, and to be approved by, the collector of the district, in such penal sum as the collector may require, not less than \$500; and a new bond may be required in the discretion of the collector, or under instructions of the Commissioner. 53 Stat. 225.

§ 2054. Certificate and number

Every dealer in leaf tobacco shall be assigned a number by the collector of the district, which number shall appear in every inventory, invoice and report rendered by the dealer, who shall also obtain certificates from the collector of the district setting forth the place where his business is carried on and the places designated by the dealer as the places of storage of his tobacco, which certificates shall be posted conspicuously within the dealer's registered place of business, and within each designated place of storage. 53 Stat. 226.

§ 2055. Inventory

Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of January, such inventory to be made under oath and rendered in such form as may be prescribed by the Commissioner. 53 Stat. 226.

§ 2056. Records and invoices

Every dealer in leaf tobacco shall render such invoices and keep such records as shall be prescribed by the Commissioner, and shall enter therein, day by day, and upon the same day on which the circumstance, thing or act to be recorded is done or occurs, an accurate account of the number of hogsheads, tierces, cases and bales, and quantity of leaf tobacco contained therein, purchased or received by him, on assignment, consignment, for storage, by transfer or otherwise, and of whom purchased or received, and the number of hogsheads, tierces, cases and bales, and the quantity of leaf tobacco contained therein, sold by him, with the name and residence in each instance of the person to whom sold, and if shipped, to whom shipped, and to what district; such records shall be kept at his place of business at all times and preserved for a period of two years, and

the same shall be open at all hours for the inspection of any internal revenue officer or agent. 53 Stat. 226.

§ 2057. Monthly reports

Every dealer in leaf tobacco on or before the tenth day of each month, shall furnish to the collector of the district a true and complete report of all purchases, receipts, sales and shipments of leaf tobacco made by him during the month next preceding, which report shall be verified and rendered in such form as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 226.

§ 2058. Demand statement of sales

It shall be the duty of any dealer in leaf tobacco, or in any material used in manufacturing tobacco, snuff, cigars, or cigarettes, on demand of any officer of internal revenue, to render a true and complete statement, under oath, of the quantity and amount of such leaf tobacco or materials sold or delivered to any person named in such demand, and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers, in the manner provided in relation to frauds and evasions. 53 Stat. 226.

§ 2059. Restrictions on sales or shipments

Sales or shipments of leaf tobacco by a dealer in leaf tobacco shall be in quantities of not less than a hogshead, tierce, case, or bale, except loose leaf tobacco comprising the breaks on warehouse floors, and except to a duly registered manufacturer of cigars for use in his own manufactory exclusively.

Dealers in leaf tobacco shall make shipments of leaf tobacco only to other dealers in leaf tobacco, to registered manufacturers of tobacco, snuff, cigars, or cigarettes, or for export. 53 Stat. 226.

§ 2060. Tax for violating sections 2057 and 2059

Upon all leaf tobacco sold, removed or shipped by any dealer in leaf tobacco in violation of the provisions of section 2059 or in respect to which no report has been made by such dealer in accordance with the provisions of section 2057, there shall be levied, assessed, collected, and paid a tax equal to the tax then in force upon manufactured tobacco, such tax to be assessed and collected in the same manner as the tax on manufactured tobacco. 53 Stat. 227.

PART IV.—DEFINITION AND REQUIREMENTS OF PEDDLERS OF TOBACCO

§ 2070. Definition

Any person who sells or offers to sell and deliver manufactured tobacco, snuff, cigars, or cigarettes, traveling from place to place, in the town or through the country, shall be regarded as a peddler of tobacco: *Provided*, That manufacturers of, jobbers, and wholesale dealers in, manufactured tobacco, snuff, cigars, and cigarettes, and the agents or salesmen of such manufacturers, jobbers, and wholesale dealers, traveling from place to place, in the town or through the country, and selling and delivering or offering to sell and deliver such products only to dealers, shall not be construed to be peddlers. 53 Stat. 227.

§ 2071. Registration

Every peddler of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. 53 Stat. 227.

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§ 2072. Statement

Every peddler of tobacco, before commencing to peddle tobacco, snuff, cigars, or cigarettes, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city, the street and number of the street where he resides; the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. 53 Stat. 227.

§ 2073. Bond

Every peddler of tobacco shall give a bond in the sum of \$500, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, cigars, or cigarettes; that he shall neither sell, nor offer for sale, any tobacco, snuff, cigars, or cigarettes, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, cigars, or cigarettes, as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal revenue stamps which have never before been used. 53 Stat. 227.

§ 2074. Certificate

Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. 53 Stat. 227.

§ 2075. Sign

Every peddler of tobacco traveling with a wagon, shall affix and keep on the same, in a conspicuous place, a sign painted in oil-colors, or gilded, giving his full name, business, and collection district. 53 Stat. 227.

§ 2076. Restrictions on sales

For restrictions on sales, see sections 2104 and 2170(a) (2).
53 Stat. 227.

SUBCHAPTER C.—PACKING, STAMPING, AND SELLING REQUIREMENTS

PART I.—TOBACCO AND SNUFF

§ 2100. Packages

All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

(a) Size

(1) **Smoking and chewing tobacco and snuff.** All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse, scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-eighth of an ounce, three-eighths of an ounce, and further packages with a difference between each package and the one next smaller of one-eighth of an ounce up to and including three ounces, and further packages with a difference between

each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and further packages with a difference between each package and the one next smaller of one ounce up to and including sixteen ounces: *Provided*, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

(2) Cavendish, plug, and twist tobacco. All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight. And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare and the net weight of the tobacco in each package.

(b) Material. Wood, metal, paper, or other materials may be used separately or in combination for packing tobacco and snuff under such regulations as the Commissioner may establish.

(c) Exceptions

(1) Export packages. The limitations and descriptions of packages contained in subsection (a) shall not apply to tobacco and snuff transported in bond for exportation and actually exported.

(2) Leaf tobacco sold by persons regarded as manufacturers. All tobacco sold in the manner described in section 2010(a) (2) by persons defined as manufacturers of tobacco thereunder shall be regarded as manufactured tobacco and shall be put up and prepared by such manufacturer in such packages only as the Commissioner, with the approval of the Secretary, shall prescribe.

(d) Enclosures and designs. No packages of manufactured tobacco or snuff, prescribed by law, shall be permitted to have packed in, or attached to, or connected with them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this subsection shall subject the offender to the penalties and punishment provided by section 2161(m).

(e) Label. Every manufacturer of tobacco or snuff shall, in addition to all other requirements of this title relating to tobacco, print on each package, or securely affix by pasting on each package containing tobacco or snuff manufactured by or for him, a label on which shall be printed the number of the manufactory, the district and State in which it is situated, and these words:

"Notice.—The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under penalties of law, not to use this package for tobacco again."

This subsection shall not apply to tobacco or snuff transported in bond for exportation and actually exported. 53 Stat. 228, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 605(d), 56 Stat. 975.

Historical Note

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942, which substituted "three ounces" for "two ounces".

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21,

1942, 4:30 p. m., E.W.T., by section 601 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

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§ 2101. Tobacco in bulk

Perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner may prescribe. 53 Stat. 229.

§ 2102. Snuff flour

Snuff flour, when sold, or removed for use or consumption, shall be put up in packages in the same manner as snuff. 53 Stat. 229.

§ 2103. Stamps

(a) Affixing and canceling

(1) Mode. The stamps provided for in section 2002(a) (1) shall be affixed and canceled in the mode prescribed by the Commissioner, and stamps when used on any wooden package shall be canceled by sinking a portion of the same into the wood with a steel die.

(2) Furnishing of instruments. The instruments or other means prescribed under section 3301(a) for attaching, protecting, and canceling stamps for tobacco and snuff shall be furnished by the United States to the persons using the stamps to be affixed therewith, under such regulations as the Commissioner may prescribe.

(3) Cross reference

For general provisions relating to the attachment and cancellation of stamps, see sections 3301 and 3303.

(b) Issue for restamping. The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of tobacco and snuff which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(c) Supply. The stamps provided for under section 2002(a) (1) shall be furnished to the collectors requiring them, and each collector shall keep at all times a supply equal in amount to three months' sale thereof, and shall sell the same only to the manufacturers of tobacco and snuff in their respective districts who have given bonds as required by law, and to owners or consignees of tobacco or snuff, upon the requisition of the proper customhouse officer having the custody of such tobacco or snuff. If the government of a foreign country permits the revenue stamps of such country to be affixed in the United States to tobacco or snuff manufactured in the United States and imported into such foreign country, then, if tobacco or snuff manufactured in such foreign country is imported into the United States from such foreign country, the importer may, under such rules and regulations as the Secretary may prescribe, have the United States revenue stamps attached to such tobacco or snuff in such foreign country.

(d) Collector's account

(1) Requirement. Every collector shall keep an account of the number, amount, and denominate values of stamps sold by him to each manufacturer or other person aforesaid.

(2) Credit in case of sale under distraint or forfeiture. Such stamps as may be required to stamp tobacco or snuff, sold under distraint by any collector, or for stamping any tobacco or snuff, which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States.

marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner shall be allowed credit for the same in settling his stamp account with the Department.

(e) **Emptied packages.** Whenever any stamped box, bag, vessel, wrapper, or envelope of any kind, containing tobacco or snuff, is emptied, the stamp or stamps thereon shall be destroyed by the person in whose hands the same may be.

(f) **Absence of stamps.** The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

(g) **Cross references**

Imported tobacco and snuff.—For stamps in case of imported tobacco or snuff, see section 2130(a).

Redemption of stamps.—For redemption of stamps, see sections 2198 and 3304.

General stamp provisions.—For general provisions relating to stamps, see subchapter A of chapter 28.

53 Stat. 229, amended Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 608(a), 64 Stat. 966.

Historical Note

1950 Amendment. Subsec. (c) amended by Act Sept. 23, 1950, which added last sentence to allow stamps to be attached in foreign countries to certain tobacco products.

Effective Date of 1950 Amendments. Section 608(c) of Act Sept. 23, 1950, provided that the amendment of subsec. (c) of this section and section 2112(c) of I.R.C.1939 should take effect on the first day of the first month which begins more than 10 days after Sept. 23, 1950.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 2104. Sales of tobacco

(a) **Limitation as to packages.** No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers from the packages authorized by section 2100.

(b) **Limitation on dealers in leaf tobacco**

For restrictions on sales and shipments by dealers in leaf tobacco to manufacturers of tobacco, see section 2059.

(c) **Sales of leaf tobacco to cigar manufacturers**

For authority of licensed manufacturers of cigars and cigarettes to purchase leaf tobacco from other registered manufacturers or registered dealers in small quantities, see section 2040.

53 Stat. 230.

PART II.—CIGARS AND CIGARETTES

§ 2110. Classification

(a) **Cigars.** All rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars.

(b) **Cigarettes.** All rolls of tobacco, or any substitute therefor, wrapped in paper or any substance other than tobacco, shall be classed as cigarettes. 53 Stat. 230.

§ 2111 TOBACCO, SNUFF, CIGARS, ETC.

§ 2111. Packages

(a) Size

(1) Cigars. All cigars weighing more than three pounds per thousand shall be packed in boxes not before used for that purpose containing, respectively, three, five, seven, ten, twelve, thirteen, twenty, twenty-five, fifty, one hundred, two hundred, two hundred fifty, or five hundred cigars each.

(2) Cigarettes and small cigars. Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or sale, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each.

(3) Exception in case of cigars or cigarettes for export. Cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection.

(b) Material. Wood, metal, paper, or other materials may be used separately or in combination for packing cigars or cigarettes, under such regulations as the Commissioner may establish.

(c) Enclosures and designs. No package of cigars or cigarettes prescribed by law, shall be permitted to have packed in, or attached to, or connected with, them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this subsection shall subject the offender to the penalties and punishments provided by section 2180 (l).

(d) Labels

(1) Indicating compliance with law. Every manufacturer of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label, on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

"NOTICE.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases."

Cigars packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection. Cigarettes shall be held to be cigars under the meaning of paragraph (1) of this subsection.

(2) Indicating clause under which tax paid. The Commissioner may, by regulation, require the manufacturer or importer to affix to each box, package, or container a conspicuous label indicating the clause of section 2000, under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on such box or container.

(e) Factory brand

(1) Requirement. Every box of cigars or cigarettes shall before removal from any manufactory or place where cigars or cigarettes are made have stamped, indented, burned, or impressed into each box, in a legible and durable manner, the number of the cigars or cigarettes contained

therein, the number of the manufactory, and the number of the district and the State.

(2) **Exception in case of export packages.** Cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection.

(f) **Exemption in case of cigars or cigarettes used by employees.** Each employee of a manufacturer of cigars or cigarettes shall be permitted to use, for personal consumption and for experimental purposes, not to exceed twenty-one cigars or cigarettes per week without the manufacturer of cigars or cigarettes being required to pack the same in boxes or to stamp or pay any internal revenue tax thereon, such exemption to be allowed under such rules and regulations as the Secretary may prescribe. 53 Stat. 230.

§ 2112. Stamps

(a) Affixing and canceling

(1) Mode

(A) **Cigarettes and small cigars.** Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall securely affix to each of the packages or parcels described in section 2111(a) (2) a suitable stamp denoting the tax thereon and shall properly cancel the same prior to sale or removal for consumption or sale under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(B) Cigars

For authority of Commissioner to prescribe the method for affixing and canceling cigar stamps, see sections 3301 and 3303.

(2) **Furnishing of instruments.** The instruments or other means prescribed under section 3301(a) for attaching, protecting, and cancelling stamps for cigars and cigarettes shall be furnished by the United States to the persons using the stamps to be affixed therewith under such regulations as the Commissioner may prescribe.

(b) **Issue for restamping.** The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of cigars and cigarettes which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(c) **Supply.** The stamps provided for under section 2002(a) (3) shall be furnished to collectors requiring them, and collectors shall, if there be any cigar or cigarette manufacturers within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to the cigar or cigarette manufacturers who have given bonds, as required by law, in their districts respectively, and to importers of cigars or cigarettes who are required to affix the same to imported cigars or cigarettes in the custody of customs officers. If the government of a foreign country permits the revenue stamps of such country to be affixed in the United States to cigars or cigarettes manufactured in the United States and imported into such foreign country, then, if cigars or cigarettes manufactured in such foreign country are imported into the United States from such foreign country, the importer may, under such rules and regulations as the Commissioner with the approval of the Secretary of the Treasury may prescribe, have the United States revenue stamps attached to such cigars or cigarettes in such foreign country.

§ 2112 TOBACCO, SNUFF, CIGARS, ETC.

(d) Collector's account

(1) **Requirement.** Every collector shall keep an account of the number, amount, and denominate values of the stamps sold by him to each cigar or cigarette manufacturer, and to the importers described in subsection (c).

(2) **Credit in case of sale under distraint or forfeiture.** Such stamps as may be required to stamp cigars or cigarettes sold under distraint by any collector, or for stamping any cigars or cigarettes which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner, shall be allowed credit for the same in settling his stamp account with the Department.

(e) **Destruction on emptied packages.** Whenever any stamped box containing cigars or cigarettes is emptied, it shall be the duty of the persons in whose hands the same is to destroy utterly the stamps thereon.

(f) **Absence of stamps.** The absence of the proper revenue stamp on any box of cigars or cigarettes sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

(g) Redemption of stamps

For redemption of stamps, see sections 2198 and 3304.

53 Stat. 231, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 612, 56 Stat. 977; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 608(b), 64 Stat. 966.

Historical Note

1950 Amendment. Subsec. (c) amended by Act Sept. 23, 1950, to make it applicable to cigars as well as cigarettes.

1942 Amendment. Subsec. (c) amended by Act Oct. 21, 1942 which added last sentence.

Effective Date of 1950 Amendments. Amendment of subsec. (c) by Act Sept. 23, 1950, as effective on the first day of the first month which begins more than ten days after Sept. 23, 1950, see note set out under section 2103 of I.R.C 1939.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which be-

gan more than ten days after Oct. 21, 1942, 4:30 p.m., E.W.T., by section 801 thereof.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1839 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 2113. Sales of cigars and cigarettes

For limitation on sales of cigars and cigarettes, see section 2170.
53 Stat. 232.

§ 2114. Cross references

(a) Imported cigars and cigarettes

For stamps in case of imported cigars and cigarettes, see subsections (b) and (c) of section 2130.

(b) General stamp provisions

For general provisions relating to stamps, see subchapter A of chapter 23.
53 Stat. 233.

SUBCHAPTER D.—IMPORTATION AND EXPORTATION**PART I.—IMPORTATION****§ 2130. Packing and stamping**

(a) **Tobacco and snuff.** All manufactured tobacco and snuff imported from foreign countries shall have the same stamps respectively affixed as in the case of like kinds of tobacco and snuff manufactured in the United States. Such stamps shall be affixed and canceled on all such articles so imported by the owner or importer thereof, while they are in the custody of the proper custom-house officers, and such articles shall not pass out of the custody of said officers until the stamps have been affixed and canceled. Such tobacco and snuff shall be put up in packages, as prescribed by law for like articles manufactured in the United States before the stamps are affixed; and the owner or importer shall be liable to all the penal provisions prescribed for manufacturers of tobacco and snuff manufactured in the United States. Whenever it is necessary to take any such articles, so imported, to any place for the purpose of repacking, affixing, and canceling such stamps, other than the public stores of the United States, the collector of customs of the port where they are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as he may direct.

(b) **Cigars.** All cigars imported from foreign countries shall have the same stamps affixed as prescribed by law for cigars manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this title prescribed for manufacturers of cigars manufactured in the United States. Whenever it is necessary to take any cigars so imported to any place other than the public stores of the United States, for the purpose of affixing and canceling such stamps, the collector of customs of the port where such cigars are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as such collector may direct.

(c) **Cigarettes.** All cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner as in the case of cigarettes manufactured in the United States, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.

(d) **Scraps, cuttings, and clippings of tobacco.** Scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner and approved by the Secretary.

(e) Cross reference

For duty upon reimportation of tax-free exports, see act of June 17, 1930, c. 497, § 314, 46 Stat. 695 (U.S.C., Title 19, § 1314).
53 Stat. 233.

PART II.—EXPORTATION

§ 2135. Exemption from tax

(a) Shipments to foreign countries and possessions of the United States

(1) **Manufacturers.** Manufactured tobacco, snuff, cigars, or cigarettes may be removed for export to a foreign country or for shipment to a possession of the United States (or, until the date on which the President proclaims that hostilities in the present war have terminated, to a territory of the United States for the use of members of the military or naval forces of the United States) without payment of tax under such rules and regulations and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) **Materials.** Perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, for export under such restrictions, rules, and regulations as the Commissioner may prescribe.

(3) **Cigarette papers and tubes.** Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed by subsection (d) of section 2000 shall not apply in respect of cigarette papers or tubes sold for export or for shipment to a possession of the United States and in due course so exported or shipped.

(b) Cross references

For provisions relating to the exemption from any internal revenue tax of articles shipped from the United States to Puerto Rico, the Philippines, or the Virgin Islands, see sections 3341, 3351, and 3361.

For definition of exportation, see section 2197(b).

For exportation free of internal revenue tax, see act of June 17, 1930, c. 497, § 317, 46 Stat. 696 (U.S.C., Title 19, § 1317).

53 Stat. 234, amended Mar. 23, 1943, c. 20, 57 Stat. 42.

Historical Note

References in Text. Section 3341, referred to in subsec. (b), which related to shipments to the Philippine Islands, was repealed by Act Apr. 30, 1946, c. 244, Title V, § 507(b), 60 Stat. 157, effective July 4, 1946.

1943 Amendment. Subsec. (a) (1) amended by Act Mar. 23, 1943, which inserted parenthetical clause relating to members of the military or naval forces.

Shipments for Armed Forces. The exemption granted by amendment of subsec. (a) (1) of this section by Act Mar.

23, 1943, on shipments to United States territories for use of military or naval forces of United States expired on the termination of hostilities of World War II, proclaimed at 12 o'clock noon of December 31, 1946, by Proc. No. 2714, set out as note under section 601 of Appendix to Title 50, War and National Defense.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2136. Drawback

(a) **In general.** There shall be an allowance of drawback on tobacco, snuff, cigars, or cigarettes on which the tax has been paid by suitable stamps affixed thereto before removal from the place of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed; the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, cigars, or cigarettes, to be ascertained under such regulations as shall be prescribed by the Commissioner and approved by the Secretary. Any sums found to be due under the provisions of this section shall be paid out of annual appropriations from the general fund of the Treasury: *Provided*, That no claim for an allowance of drawback shall be entertained or allowed until a certificate from the collector of customs

at the port from which the goods have been exported, or other evidence satisfactory to the Commissioner, has been furnished, that the stamps affixed to the tobacco, snuff, cigars, or cigarettes entered and cleared for export to a foreign country were totally destroyed before such clearance; nor until the claimant has filed a bond, with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of the tax for which said claim is made, that he will procure, within a reasonable time, evidence satisfactory to the Commissioner that said tobacco, snuff, cigars, or cigarettes have been landed at any port without the jurisdiction of the United States, or that after shipment the same were lost at sea, and have not been re-landed within the limits of the United States.

(b) Shipments to Puerto Rico and Philippine Islands

For provisions relating to the allowance of drawback of internal revenue tax on articles shipped to Puerto Rico or the Philippine Islands, see sections 3361 and 3341, respectively.

53 Stat. 234.

Historical Note

References in Text. Section 3341, referred to in subsec. (b), which related to shipments to the Philippine Islands, was

repealed by Act Apr. 30, 1946, c. 244, Title V, § 507(b), 60 Stat. 157, effective July 4, 1946.

§ 2137. Refund to exporter instead of manufacturer

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect of articles exported or shipped under section 2135(a) (1) and (3) may be refunded to the exporter or shipper of the articles, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded. 53 Stat. 235.

SUBCHAPTER E.—PENALTIES AND FORFEITURES

PART I.—PENALTIES AND FORFEITURES COMMON TO TOBACCO, SNUFF, CIGARS, AND CIGARETTES

§ 2150. Failure to register, penalty

Every dealer in leaf tobacco, manufacturer of tobacco, manufacturer of cigars or cigarettes, or peddler of tobacco who fails to register with the collector as required under sections 2051, 2011, 2031, and 2071, respectively, shall be subject to a penalty of \$50. 53 Stat. 235.

§ 2151. Fraudulently stamped packages, possession, sale of, or from, penalty

Every manufacturer or other person who—

(a) Sells or offers for sale any box or other package of tobacco, snuff, cigars, or cigarettes, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used; or

(b) Sells from any such fraudulently stamped box or package; or

(c) Has in his possession any box or package as aforesaid, knowing the same to be fraudulently stamped;

shall, for each such offense, be fined not less than \$100 nor more than \$500, and imprisoned for not less than one year nor more than three years. 53 Stat. 235.

§ 2152 TOBACCO, SNUFF, CIGARS, ETC.

§ 2152. Peddling unlawfully, penalty

Every person who—

(a) **Failure to obtain certificate.** Is found peddling tobacco, snuff, cigars, or cigarettes, without having previously obtained the collector's certificate as provided for in section 2074; or

(b) **Failure to give bond.** Is found peddling tobacco, snuff, cigars, or cigarettes, without having given the bond required under section 2073; or

(c) **Failure to affix sign.** Fails to have affixed to his wagon, in a conspicuous place, a sign, painted in oil-colors, or gilded, giving his full name, business, and collection district; or

(d) **Selling in unauthorized packages.** Sells tobacco, snuff, cigars, or cigarettes otherwise than in full and original packages as put up by the manufacturer; or

(e) **Possession of used stamps.** Has in his possession any internal revenue stamp which has been removed from any box or other package of tobacco, snuff, cigars, or cigarettes; or

(f) **Possession of broken packages with undestroyed stamps.** Has in his possession any empty or partially emptied box or other package which has been used for tobacco, snuff, cigars, or cigarettes, the stamp or stamps on which have not been destroyed; shall for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than six months nor more than one year, or both, at the discretion of the court. 53 Stat. 235.

§ 2153. Peddler's certificate, refusal to permit inspection, penalty

Refusal or failure to produce for inspection the collector's certificate for peddlers, when demanded by any internal revenue agent, shall subject the party guilty thereof to a fine of not more than \$500 and to imprisonment not more than twelve months. 53 Stat. 236.

§ 2154. Peddlers, forfeitures relating to

(a) **Offenses mentioned in section 2152.** Any collector or deputy collector finding any person peddling tobacco, snuff, cigars, or cigarettes, in the act of offending as to any of the offenses mentioned in section 2152, may seize the horse or horses, mule or mules, wagon and contents, or pack, bundle, or basket, of any such person; and the collector shall thereupon proceed upon such seizure as provided in subsection (b).

(b) **Refusal to permit inspection of certificate.** Whenever any peddler refuses to exhibit the collector's certificate for peddlers on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, published in any newspaper in the district, or served personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal revenue laws relating to forfeitures. 53 Stat. 236.

§ 2155. Relanding unlawfully when shipped for export, penalty and forfeiture

(a) **Penalty.** Every person who, with the intent to defraud the revenue laws of the United States, relands or causes to be relanded, within the jurisdiction of the United States, any manufactured tobacco, snuff, cigars, or cigarettes, which have been shipped for exportation under the

provisions of section 2135, without properly entering such tobacco, snuff, cigars, or cigarettes at a customhouse, and paying the proper customs and internal revenue tax thereon, or who receives such relanded tobacco, snuff, cigars, or cigarettes, and every person who aids or abets in such relanding or receiving such tobacco, snuff, cigars, or cigarettes, shall, on conviction, be fined not exceeding \$5,000, or imprisoned not more than three years; and

(b) **Forfeiture.** All tobacco, snuff, cigars, cigarettes so relanded shall be forfeited to the United States. 53 Stat. 236.

§ 2156. Information, returns, and payment of tax, violations relating to; penalties

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. 53 Stat. 236.

**PART II.—PENALTIES AND FORFEITURES OF SPECIAL APPLICATION
TO TOBACCO AND SNUFF**

§ 2160. Persons in general

(a) **Removal from factory improperly packed or stamped, penalty.** Every person who removes from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled, as required by law, except for export as provided in section 2135, shall for each such offense, respectively, be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

(b) Use, sale, or possession without proper stamps, penalty. Every person who—

(1) Uses, sells, or offers for sale, or has in possession, except in the manufactory, or while in transfer under bond from any manufactory for exportation to a foreign country, any manufactured tobacco or snuff, without proper stamps for the amount of tax thereon being affixed and canceled; or

(2) Sells, or offers for sale, for consumption in the United States, any manufactured tobacco or snuff, or uses, or has in possession, except in the manufactory, or while in transfer under bond from any manufactory for exportation to a foreign country, any manufactured tobacco or snuff which has been inspected and removed for export; shall for each such offense, respectively, be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

(c) Sale when improperly packed or stamped, penalty. Every person who sells or offers for sale any snuff or any kind of manufactured tobacco not put up in packages and stamped as prescribed in this chapter, except at retail as provided in section 2104, shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than two years.

(d) Purchase or receipt for sale without proper brands or stamps, penalty. Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law shall be liable to a penalty of \$50 for each offense.

(e) Affixing false or used stamps, penalty. Every person who affixes to any package containing tobacco or snuff, any false, forged, fraudulent, spurious, or counterfeit stamp, or a stamp which has been before used, shall be deemed guilty of a felony, and shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than two years nor more than five years.

(f) Willful neglect or refusal to destroy stamps on emptied packages, penalty. Every person who willfully neglects or refuses to destroy the stamp or stamps on any empty box, bag, vessel, wrapper, or envelope of any kind which contained tobacco or snuff, as required in section 2103 (e), shall for each such offense be fined \$50 and imprisoned not less than ten days nor more than six months.

(g) Reuse of stamps or emptied stamped packages, penalty. Every manufacturer or other person who—

(1) Puts tobacco or snuff into any box, bag, vessel, wrapper, or envelope which contained tobacco or snuff, the same having been either emptied or partially emptied; or

(2) Has in his possession any stamp which has been previously used; or

(3) Affixes to any box or other package any stamp which has been previously used; shall for each offense be fined not less than \$100 nor more than \$500 and imprisoned for not less than one year nor more than three years.

(h) Absence of stamp, forfeiture. Manufactured tobacco or snuff contained in any package from which the proper stamp is absent shall be forfeited to the United States.

(i) Trafficking in used stamps or emptied stamped packages, penalty. Every person who sells or gives away, or who buys or accepts from another any empty stamped box, bag, vessel, wrapper, or envelope of any kind, which contained tobacco or snuff, or the stamp or stamps taken from any such empty box, bag, vessel, wrapper, or envelope of any kind, shall, for

each such offense, be fined \$100 and imprisoned for not less than twenty days, and not more than one year.

(j) **Fraudulent claim for drawback, penalty.** If any person or persons shall fraudulently claim or seek to obtain an allowance or drawback of taxes on any manufactured tobacco, or shall fraudulently claim any greater allowance or drawback thereon than the tax actually paid, such person or persons shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the Secretary, to be recovered as in other cases of forfeiture provided for in the internal revenue laws. 53 Stat. 237.

§ 2161. Manufacturers

(a) **Manufacturing without bond, penalty.** Every person who manufactures tobacco or snuff of any description without first giving bond as required under section 2013, shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned for not less than one nor more than five years.

(b) **Selling or removing without bond, forfeiture.** Every manufacturer of tobacco who removes, otherwise than as provided by law, or sells any tobacco or snuff, without having given bond as required by law, shall, in addition to the penalties elsewhere provided by law for such offenses forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

(c) **Neglect or refusal to obtain certificate, penalty.** Every manufacturer of tobacco who neglects or refuses to obtain the certificate required under section 2014, or to keep the same posted as provided in that section, shall be fined not less than \$100 nor more than \$500.

(d) **Neglect to put up sign, penalty.** Every manufacturer of tobacco who neglects to place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, the sign required under section 2015 shall be fined not less than \$100 or more than \$500.

(e) **Refusal or willful neglect to deliver inventory, penalty.** Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to deliver the inventory required under section 2017, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than 6 months nor more than 3 years.

(f) **Refusal or willful neglect to keep books, penalty.** Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to keep the accounts required in section 2018, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(g) **Refusal or willful neglect to furnish monthly abstract, penalty.** Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to furnish the abstract required under section 2019, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(h) **False or fraudulent entries of manufactures, sales or purchases, forfeiture.** Every manufacturer of tobacco who makes false or fraudulent entries of manufactures or sales of tobacco or snuff, or makes false or fraudulent entries of the purchase or sales of leaf-tobacco, tobacco stems, or other material, shall in addition to the penalties provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other

materials which may be found in his possession, in his manufactory, or elsewhere.

(1) Removal unlawfully or sale without proper stamps

(1) **Forfeiture.** Every manufacturer of tobacco who removes, otherwise than as provided by law, or sells, without the proper stamps denoting the tax thereon, any tobacco or snuff, shall, in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

(2) Penalty

For penalties for such offenses, see section 2160.

(j) Affixing false or used stamps

(1) **Forfeiture.** Every manufacturer of tobacco who affixes any false, forged, fraudulent, spurious, or counterfeit stamp, or imitation of any stamp required by law, or any stamp required by law which has been previously used, to any box or package containing any tobacco or snuff, shall, in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

(2) Penalty

For penalties for such offenses, see section 2160(e).

(k) **Omission or removal of label, penalty.** Every manufacturer of tobacco who neglects to print on or affix the label required under section 2100(e) to any package containing tobacco or snuff manufactured by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense shall be committed.

(l) **Collusion in case of manufacture on commission, shares, or contract.** In case of fraud on the part of either of the persons referred to in section 2001(b) (1) or of any collusion on their part with intent to defraud the revenue—

(1) **Forfeiture.** Such material and manufactured articles shall be forfeited to the United States; and

(2) **Penalty.** Each party to such fraud or collusion shall be deemed guilty of a misdemeanor, and be fined not less than \$100 nor more than \$5,000, and imprisoned for not less than six months nor more than three years.

(m) **Offenses not specifically covered.** If any manufacturer of tobacco shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other section of this chapter for the neglecting, omitting, or refusing to do, or for the doing, or causing to be done the thing required or prohibited—

(1) **Penalty.** He shall pay a penalty of \$1,000; and

(2) **Forfeiture.** All tobacco found in his manufactory shall be forfeited to the United States. 53 Stat. 238.

§ 2162. Dealers in leaf tobacco, penalties

(a) Every dealer in leaf tobacco who neglects or refuses to—

(1) **Statement.** Furnish the statement required under section 2052;

or

- (2) **Bond.** Give the bond required under section 2053; or
- (3) **Inventory.** File the inventory required under section 2055; or
- (4) **Records and invoices.** Keep the records and render the invoices required under section 2056; or
- (5) **Monthly reports.** Render the returns or reports required under section 2057; or
- (6) **Storage notice.** Notify the collector of the district of additions to his places of storage as required under section 2052; shall be fined not less than \$100 or more than \$500, or imprisoned not more than one year, or both.
- (b) Every dealer in leaf tobacco who—
 - (1) **Unlawful shipment or delivery.** Ships or delivers leaf tobacco, except as provided in section 2059; or
 - (2) **Fraudulent omission to account.** Fraudulently omits to account for tobacco purchased, received, sold or shipped, shall be fined not less than \$100 nor more than \$500 or imprisoned not more than one year, or both. 53 Stat. 240.

§ 2163. Customs officers

Every officer of customs who permits any manufactured tobacco or snuff imported from foreign countries to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 2130(a), shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years. 53 Stat. 240.

PART III.—PENALTIES AND FORFEITURES OF SPECIAL APPLICATION
TO CIGARS AND CIGARETTES

Subpart A.—Persons in General

§ 2170. Unlawful boxing, penalty and forfeiture

- (a) **Penalty.** Every person who—
 - (1) **Packing incorrect number.** Packs in any box any cigars or cigarettes in excess of or less than the number provided by law to be put in each box respectively; or
 - (2) **Sale or delivery in unauthorized boxes.** Sells, or offers for sale, delivers or offers to deliver, any cigars or cigarettes in any other form than in new boxes as described in section 2111(a), except at retail by retail dealers from boxes packed, stamped, and branded in the manner prescribed by law; or
 - (3) **False branding.** Falsely brands any box; or
 - (4) **Stamps showing incorrect tax.** Affixes a stamp on any box denoting a less amount of tax than that required by law; shall be fined for each offense not more than \$1,000 and be imprisoned not more than two years.
- (b) **Forfeiture.** Whenever any cigars or cigarettes are sold, or offered for sale, not properly boxed and stamped, they shall be forfeited to the United States: *Provided*, That cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection. 53 Stat. 241.

§ 2171. Unlawful removal from manufactory, forfeiture and penalty

(a) **Forfeiture.** Whenever any cigars or cigarettes are removed from any manufactory, or place where cigars or cigarettes are made, without—

(1) **Packing.** Being packed in boxes as required by the provisions of this chapter; or

(2) **Stamping.** The proper stamp thereon denoting the tax; or

(3) **Branding.** Stamping, indenting, burning, or impressing, into each box, in a legible and durable manner, the number of the cigars or cigarettes contained therein, the number of the manufactory, and the number of the district and the State; or

(4) **Affixing and canceling stamp.** Properly affixing to the box and canceling the stamp denoting the tax; they shall be forfeited to the United States.

(b) **Penalty**

(1) **Boxing and stamping.** Every person who removes from the place of manufacture any cigars or cigarettes not properly boxed and stamped as required by law, shall be deemed guilty of a felony, and shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

(2) **Other acts.** Every person who commits any of the offenses described in subsection (a) of this section or subsection (b) of section 2170 shall be fined for each such offense not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than two years.

(c) **Exemption in case of exportation.** Cigars or cigarettes packed expressly for export and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this section. 53 Stat. 241.

§ 2172. Fraudulent use of stamps, penalty

Every person who—

(a) **Packing in boxes bearing false stamps.** Packs cigars or cigarettes in any box bearing a false or fraudulent or counterfeit stamp; or

(b) **Affixing false stamps.** Affixes to any box containing cigars or cigarettes a stamp in the similitude or likeness of any stamp required to be used by the laws of the United States, whether the same be a customs or internal revenue stamp; or

(c) **Removal of stamps.** Removes, or causes to be removed, from any box any stamp denoting the tax on cigars, or cigarettes, with intent to use the same; or

(d) **Reuse of stamps.** Uses or permits any other person to use any stamp so removed; or

(e) **Trafficking in used stamps.** Receives, buys, sells, gives away, or has in his possession any stamp so removed; or

(f) **Other fraudulent uses.** Makes any other fraudulent use of any stamp intended for cigars or cigarettes, shall be deemed guilty of a felony, and shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years. 53 Stat. 242.

§ 2173. Unlawful purchase, receipt, possession, or sale, penalties

(a) **Cigars not tax-paid.** Every person who buys, receives, or has in his possession any cigars or cigarettes on which the tax to which they are liable has not been paid, shall be deemed guilty of a felony and shall be

ined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

(b) Cigars not properly branded or stamped. Every person who purchases or receives for sale any cigars or cigarettes which have not been branded or stamped according to law, shall be liable to a penalty of \$50 for each such offense. 53 Stat. 242.

§ 2174. Sale of imported cigars improperly packed and stamped, penalty

Every person who sells or offers for sale any imported cigars or cigarettes, or cigars or cigarettes purporting or claimed to have been imported, not put in packages and stamped as provided by this chapter, shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years. 53 Stat. 242.

§ 2175. Absence of stamp, forfeiture

In case of the absence of the proper revenue stamp on any box of cigars or cigarettes sold, or offered for sale, or kept for sale, such cigars or cigarettes shall be forfeited to the United States. 53 Stat. 242.

§ 2176. Empty boxes

(a) Penalties

(1) Destruction of stamps. Any person who willfully neglects or refuses to destroy, as required in section 2112(e), the stamps on any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$50 and imprisoned not less than ten days nor more than six months.

(2) Trafficking. Any person who fraudulently gives away or accepts from another, or who sells or buys for packing cigars or cigarettes, any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$100 and be imprisoned not more than one year.

(3) Refilling. Any person who uses for packing cigars or cigarettes any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$100 and be imprisoned not more than one year.

(b) Destruction. Any revenue officer may destroy any emptied cigar or cigarette box upon which a cigar or cigarette stamp is found. 53 Stat. 242.

§ 2177. Fraudulent claim for drawback, penalty

For penalty imposed in the case of fraudulent claims for drawback, see section 3326.

53 Stat. 243.

Subpart B.—Manufacturers and Customs Officers

§ 2180. Manufacturers

(a) Manufacturing without bond, penalty. Every person who manufactures cigars or cigarettes of any description without first giving bond as required in section 2033, shall be fined not less than \$100 nor more than \$5,000, and imprisoned not less than three months nor more than five years.

(b) Selling or removing without bond, forfeiture. Every manufacturer of cigars or cigarettes who removes or sells any cigars or cigarettes without having given bond as such manufacturer, shall, in addition to the

penalties elsewhere provided in this chapter for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars, and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

(c) **Neglect to put up sign, penalty.** Any manufacturer of cigars or cigarettes neglecting to place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, the sign required under section 2034 shall, on conviction, be fined not less than \$100 nor more than \$500.

(d) **Refusal or willful neglect to deliver inventory, penalty.** In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to deliver the inventory required under section 2036, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(e) **Refusal or willful neglect to keep books, penalty.** In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to keep the account required under section 2037, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(f) **Refusal or willful neglect to furnish a monthly abstract, penalty.** In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to furnish the abstract required under section 2038, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(g) **Sale or removal without proper stamps**

(1) **Forfeiture.** Every manufacturer of cigars or cigarettes who removes or sells any cigars or cigarettes without the proper stamps denoting the tax thereon shall, in addition to the penalties elsewhere provided in this chapter for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

(2) **Penalty**

For penalties for such offenses, see section 2171(b).

(h) **False entries, forfeiture.** Every manufacturer of cigars or cigarettes who makes false or fraudulent entries of the manufacture or sale of any cigars or cigarettes, or makes false or fraudulent entries of the purchase or sale of leaf tobacco, tobacco stems, or other material used in the manufacture of cigars or cigarettes, shall, in addition to the penalties elsewhere provided in this title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

(1) Affixing false or fraudulent stamps

(1) Forfeiture. Every manufacturer of cigars or cigarettes who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars or cigarettes, shall, in addition to the penalties elsewhere provided for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars, and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

(2) Penalty

For penalty for such offense, see section 2172(b).

(j) Omission or removal of label, penalty. Every manufacturer of cigars or cigarettes who neglects to affix the label required under section 2111(d) (1) to any box containing cigars or cigarettes made by or for him, or sold or offered for sale by or for him, and every person who removes any such label, so affixed, from any such box, shall be fined \$50 for each box in respect to which such offense is committed.

(k) Collusion in case of manufacture on commission, shares, or contract. In case of fraud on the part of either of the persons referred to in section 2001(b) (2), or of any collusion on their part with intent to defraud the revenue—

(1) Forfeiture. Such material, cigars, or cigarettes shall be forfeited to the United States; and

(2) Penalty. Every person engaged in such fraud or collusion shall be fined not less than \$100 nor more than \$5,000, and imprisoned for not less than six months nor more than three years.

(l) Offenses not specifically covered. If any manufacturer of cigars or cigarettes shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done the thing required or prohibited—

(1) Penalty. He shall pay a penalty of \$1,000; and

(2) Forfeiture. All tobacco, cigars, or cigarettes found in his manufactory shall be forfeited to the United States. 53 Stat. 243.

§ 2181. Customs officers

Every officer of customs who permits any cigars or cigarettes imported into the United States from foreign countries to pass out of his custody or control, without compliance by the owner or importer thereof with the provisions of section 2130(b), shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years. 53 Stat. 245.

SUBCHAPTER F.—MISCELLANEOUS PROVISIONS

§ 2190. Disposal of forfeited tobacco, snuff, cigars, and cigarettes

In case it shall appear that any abandoned, condemned, or forfeited tobacco, snuff, cigars, or cigarettes, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to

the Commissioner, he is authorized to order the destruction of such tobacco, snuff, cigars, or cigarettes by the officer in whose custody and control the same may be at the time, and in such manner and under such regulations as the Commissioner may prescribe, or he may, under such regulations, order delivery of such tobacco, snuff, cigars, or cigarettes, without payment of any tax, to any hospital maintained by the United States for the use of present or former members of the military or naval forces of the United States. 53 Stat. 245.

§ 2191. Inspection of cigars and cigarettes

The Commissioner may prescribe such regulations for the inspection of cigars and cigarettes and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax. 53 Stat. 245.

§ 2192. Inspection of peddler's certificate

Any internal revenue agent may demand production of and inspect the collector's certificate for peddlers. 53 Stat. 245.

§ 2193. Record of manufacturers

(a) **Tobacco and snuff.** Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns.

(b) **Cigars and cigarettes.** Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal revenue agents, of the name and residence of every person engaged in the manufacture of cigars or cigarettes in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns. 53 Stat. 245.

§ 2194. Records, statements, and returns

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner with the approval of the Secretary, may from time to time prescribe. 53 Stat. 245.

§ 2195. Rules and regulations

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791.
53 Stat. 246.

§ 2196. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 246.

§ 2197. Territorial extent of law

(a) **In general.** The internal revenue laws imposing taxes on tobacco, snuff, cigars, or cigarettes shall be held to extend to such articles produced

anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not.

(b) **Exportation free of internal revenue tax.** The shipment or delivery of manufactured tobacco, snuff, cigars, cigarettes, or cigarette papers or tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, as defined by subsection (a), shall be deemed exportation within the meaning of the internal revenue laws applicable to the exportation of such articles without payment of internal revenue tax. 53 Stat. 246, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 605(e), 56 Stat. 975.

Historical Note

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942, which inserted "or cigarette papers or tubes."

1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21,

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2198. Redemption of stamps on packages withdrawn from market

Internal-revenue stamps affixed to packages of tobacco, snuff, cigars, or cigarettes which, after removal from factory or custom-house for consumption or sale, the manufacturer or importer withdraws from the market, may, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, be redeemed if issued after December 31, 1931, and if claim for their redemption is presented by the manufacturer or importer within three years after the year of issue as indicated by the number or symbol printed thereon by the Government, irrespective of the date of their purchase. Stamps of any issue shall not be sold until those of the previous year's issue have been disposed of or later than one year after the year of issue. 53 Stat. 246.

§ 2199. Cross references

For general provisions relating to stamps, information and returns, assessment, collection, and refunds, see sections 3300 to 3313 and chapters 34 to 37, inclusive. 53 Stat. 246.

CHAPTER 16.—OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER

SUBCHAPTER A.—OLEOMARGARINE

Sec.

- 2300. Oleomargarine defined.
- 2301. Repealed.
- 2302. Manufacturers.
- 2303. Wholesale dealers.
- 2304. Retail dealers.
- 2305. Stamps on emptied packages.
- 2306. Importation.
- 2307. Exportation.
- 2308. Penalties.
- 2309. Forfeitures.
- 2310. Recovery of penalties and forfeitures.
- 2311. Commissioner's decisions.
- 2312. Chemists and microscopists.
- 2313. Tobacco stamp laws applicable.
- 2314. Regulations.

SUBCHAPTER B.—ADULTERATED AND PROCESS OR RENOVATED BUTTER

- 2320. Definitions.
- 2321. Tax.
- 2322. Manufacturers.
- 2323. Dealers in adulterated butter.
- 2324. Books and returns of wholesale dealers in adulterated and process or renovated butter.
- 2325. Inspection of process or renovated butter.
- 2326. Penalties.
- 2327. Other laws applicable.

SUBCHAPTER A.—OLEOMARGARINE

§ 2300. Oleomargarine defined

For the purposes of this chapter, and of sections 3200 and 3201, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum or common salt. This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives,

illuminating oils, cleansing compounds, or flavoring compounds. 53 Stat. 247.

Historical Note

References in Text. Sections 3200 and 3201, referred to in the text, which subjected manufacturers, wholesale dealers and retail dealers of oleomargarine to a

special occupational tax and provided penalties for the non-payment thereof, were repealed by Act Mar. 16, 1950, c. 61, § 2, 64 Stat. 20, eff. July 1, 1950.

§ 2301. Repealed. Mar. 16, 1950, c. 61, § 1, 64 Stat. 20, eff. July 1, 1950.

Historical Note

Section Prior to Repeal:

“§ 2301. Tax

“(a) Rate

“(1) Upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax at the rate of one-fourth of 1 cent per pound; except that such tax shall be at the rate of 10 cents per pound in the case of oleomargarine which is yellow in color.

“(2) For the purposes of paragraph (1), oleomargarine shall be held to be yellow in color when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in the terms of the Lovibond tintometer scale or its equivalent. Such measurements shall be made under regulations prescribed by the Commissioner, with the approval of the Secretary, and such regulations shall provide that the measurements shall be applied in such manner and under such conditions as will, in the opinion of the Commissioner, insure as nearly as practicable that the result of the measurement will show the color of the oleomargarine under the conditions under which it is customarily offered for sale to the consumer.

“(b) By whom paid. The tax levied by subsection (a) shall be paid by the manufacturer.

“(c) How paid

“(1) Stamps. The tax levied by subsection (a) shall be represented by coupon stamps.

“(2) Assessment. Whenever any manufacturer of oleomargarine sells, or removes for sale or consumption, any oleomargarine upon which the tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

“(d) Special tax

“For special tax on manufacturers, wholesale and retail dealers, see section 3200.

“(e) Imported oleomargarine

“For tax on imported oleomargarine, see section 2306.
“53 Stat. 248.”

§ 2302. Manufacturers

(a) **Definition.** Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine. And any person that sells, vends, or furnishes oleomargarine for the use and consumption of others, except to his own family table without compensation, who shall add to or mix with such oleomargarine any substance which causes such oleomargarine to be yellow in color, determined as provided in paragraph 2 of section 2301(a), shall also be held to be a manufacturer of oleomargarine within the meaning of this chapter or section 3200 or 3201 of chapter 27, and subject to the provisions thereof.

(b) Packing requirements

(1) **Kind and weight of packages.** All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages, not before used for that purpose, containing, or enclosed in a manufacturer's package made from any of such materials of, not less than ten pounds.

(2) **Marks and stamps.** The packages described in paragraph (1) shall be marked, stamped, and branded as the Commissioner, with the approval of the Secretary, shall prescribe; and all sales made by manufacturers of oleomargarine shall be in original stamped packages.

(3) **Caution label.** Every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufac-

tured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(c) **Books and returns.** Every manufacturer of oleomargarine shall file with the collector of the district in which his manufactory is located such notices, inventories, shall keep such books, and render such returns of materials and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(d) **Factory number and signs.** Every manufacturer of oleomargarine shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(e) **Bonds.** Every manufacturer of oleomargarine shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$5,000; and the sum of said bond may be increased from time to time, and additional sureties required at the discretion of the collector, or under instructions of the Commissioner. 53 Stat. 248.

Historical Note

References in Text. Paragraph 2 of section 2301(a) and sections 3200 and 3201 of chapter 27, referred to in subsec. (a), which defined yellow margarine and subjected manufacturers, wholesale dealers

and retail dealers of oleomargarine to a special occupational tax and provided penalties for the non-payment thereof, were repealed by Act Mar. 16, 1950, c. 61, §§ 1, 2, 64 Stat. 20, eff. July 1, 1950.

§ 2303. Wholesale dealers

(a) **Definition.** Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine.

(b) **Selling requirements.** All sales made by wholesale dealers in oleomargarine shall be in original stamped packages.

(c) **Books and returns.** Wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Commissioner, with the approval of the Secretary, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent. 53 Stat. 249.

§ 2304. Retail dealers

(a) **Definition.** Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

(b) **Packing and selling requirements.** Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack, or cause to be packed, the oleomargarine sold by them in suitable wooden, tinplate, or paper packages which shall be marked and branded as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 249.

§ 2305. Stamps on emptied packages

Whenever any stamped package containing oleomargarine is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. Any revenue officer may destroy any emptied

oleomargarine package upon which the tax-paid stamp is found. 53 Stat. 249.

§ 2306. Importation

All oleomargarine imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps as in the case of oleomargarine manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper customhouse officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than ten pounds, as prescribed in this chapter for oleomargarine manufactured in the United States, before the stamps are affixed; and the owner or importer of such oleomargarine shall be liable to all the penal provisions of this chapter prescribed for manufacturers of oleomargarine manufactured in the United States. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct. 53 Stat. 250.

§ 2307. Exportation

Oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Commissioner, with the approval of the Secretary, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "Oleomargarine," in plain Roman letters not less than one-half inch square. 53 Stat. 250.

§ 2308. Penalties

(a) **False branding; selling, packing, or stamping in violation of law.** Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tinplate, or paper packages as described in section 2302(b) (1) and (2) or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than \$1,000, and be imprisoned not more than two years.

(b) **Omission or removal of label.** Every manufacturer of oleomargarine who neglects to affix the label described in section 2302(b) (3) to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

(c) **Removal or defacement of stamps, marks, or brands.** Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine taxed as provided in this subchapter shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$2,000, and by imprisonment for not less than thirty days nor more than six months.

(d) **Fraud by manufacturers.** Whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts

to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months, nor more than three years.

(e) **Purchasing when not properly branded or stamped.** Every person who knowingly purchases or receives for sale any oleomargarine which has not been branded or stamped according to law shall be liable to a penalty of \$50 for each such offense.

(f) **Purchasing from manufacturer who has not paid special tax.** Every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax required under subsection (a) of section 3200 of chapter 27 shall be liable for each offense to a penalty of \$100.

(g) **Empty packages**

(1) **Failure to destroy stamps.** Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine shall for each such offense be fined not exceeding \$50, and imprisoned not less than ten days nor more than six months; and

(2) **Trafficking.** Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine, any such stamped package, shall for each such offense be fined not exceeding \$100, and be imprisoned not more than one year.

(h) **Failure of wholesale dealers to keep or permit inspection of books, or to render returns.** Any person who willfully violates any of the provisions of subsection (c) of section 2303 shall for each such offense be fined not less than \$50 and not exceeding \$500, and imprisoned not less than thirty days nor more than six months.

(i) **Imported oleomargarine**

(1) **Failure of customs officer to comply with law.** Every officer of customs who permits any imported oleomargarine to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 2306 relating thereto, shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

(2) **Sale when improperly packed or stamped.** Every person who sells or offers for sale any imported oleomargarine, or oleomargarine purporting or claimed to have been imported, not put up in packages and stamped as provided by this subchapter, shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

(j) **Offenses not specifically covered.** If any manufacturer of oleomargarine, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this subchapter or chapter 27 prohibited, if there be no specific penalty or punishment imposed by any other provision of this subchapter or chapter 27 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of \$1,000. 53 Stat. 250.

Historical Note

References in Text. Subsection (a) of section 3200 of chapter 27, referred to in subsec. (f), which subjected manufacturers of oleomargarine to a special oc-

cupational tax, was repealed by Act Mar. 16, 1950, c. 61, § 2, 64 Stat. 20, eff. July 1, 1950.

§ 2309. Forfeitures

(a) **Special tax on manufacturer unpaid.** Every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax required under subsection (a) of section 3200 shall be liable for each offense to a forfeiture of all articles so purchased or received, or of the full value thereof.

(b) **Packages unstamped, unmarked, or deleterious.** All packages of oleomargarine subject to tax under this subchapter, that shall be found without stamps or marks as herein provided, and all oleomargarine intended for human consumption which contains ingredients adjudged, as provided in section 2311, to be deleterious to the public health, shall be forfeited to the United States.

(c) **Fraud by manufacturer.** Whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises.

(d) **Offenses not specifically covered.** If any manufacturer or or wholesale dealer in oleomargarine shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this subchapter or chapter 27 prohibited, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States. 53 Stat. 251.

Historical Note

References in Text. Subsection (a) of section 3200, referred to in subsec. (a), which subjected manufacturers of oleomargarine to a special occupational tax, was repealed by Act Mar. 16, 1950, c. 61, § 2, 64 Stat. 20, eff. July 1, 1950.

§ 2310. Recovery of penalties and forfeitures

All fines, penalties, and forfeitures imposed by this subchapter or section 3201 may be recovered in any court of competent jurisdiction. 53 Stat. 252.

Historical Note

References in Text. Section 3201, referred to in the text, which provided penalties for the non-payment of the special occupational tax on oleomargarine, was repealed by Act Mar. 16, 1950, c. 61, § 2, 64 Stat. 20, eff. July 1, 1950.

§ 2311. Commissioner's decisions

(a) **Taxability.** The Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this subchapter; and his decision in matters of taxation under this subchapter shall be final.

(b) **Deleterious ingredients.** The Commissioner may also decide whether any substance made in imitation or semblance of butter, and intended for human consumption, contains ingredients deleterious to the public health.

(c) **Appeal.** In case of doubt or contest the decisions of the Commissioner in the class of cases under subsection (b) may be appealed from to a board constituted for the purpose, and composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture; and the decisions of this board shall be final in the premises. 53 Stat. 252.

Historical Note

Transfer of Functions. All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of

such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

§ 2312. Chemists and microscopists

For the appointment and employment of chemists and microscopists, see subchapter B of chapter 39.

53 Stat. 252.

§ 2313. Tobacco stamp laws applicable

The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by section 2301(c) (1). 53 Stat. 252.

§ 2314. Regulations

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of this subchapter and sections 3200 and 3201, see section 3791.

53 Stat. 252.

SUBCHAPTER B.—ADULTERATED AND PROCESS OR RENOVATED BUTTER

§ 2320. Definitions

(a) **Butter.** For the purpose of this chapter and sections 3206, and 3207, the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

(b) **Adulterated butter.** "Adulterated butter" is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

(c) **Process or renovated butter.** "Process butter" or "renovated butter" is defined to mean butter which has been subjected to any process by which it is melted, clarified or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by subsection (b). 53 Stat. 252.

§ 2321. Tax

(a) Rate

(1) **Adulterated butter.** Upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound.

(2) **Process or renovated butter.** Upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

(b) **By whom paid.** The tax to be levied by subsection (a) shall be paid by the manufacturer.

(c) How paid

(1) **Stamps.** The tax to be levied by subsection (a) shall be represented by coupon stamps.

(2) Assessment

For assessment in case of omitted taxes, see section 3311.

(d) Special tax

(1) Manufacturers of adulterated and process or renovated butter

For special tax on manufacturers of adulterated and process or renovated butter, see subsection (a) of section 3206.

(2) Wholesale dealers and retail dealers in adulterated butter

For special tax on wholesale dealers and retail dealers in adulterated butter, see subsections (b) and (c) of section 3206.

53 Stat. 253.

§ 2322. Manufacturers

(a) **Definition.** Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

(b) Packing, stamping, and selling requirements

(1) **Adulterated butter.** All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tinplate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Commissioner, with the approval of the Secretary, shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—That the manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(2) Process or renovated butter

For marking process or renovated butter, see section 2325.

(c) **Books and returns.** Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of material and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

(d) **Factory number and signs.** Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may by regulation require.

(e) **Bonds.** Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$500; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner. 53 Stat. 253.

§ 2323. Dealers in adulterated butter

(a) **Dealer defined.** Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

(b) **Retail dealer defined.** Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

(c) **Selling requirements.** Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked and branded as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 254.

§ 2324. Books and returns of wholesale dealers in adulterated and process or renovated butter

Wholesale dealers in process, renovated, or adulterated butter shall keep such books and render such returns in relation thereto as the Commissioner, with the approval of the Secretary, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent. 53 Stat. 254.

§ 2325. Inspection of process or renovated butter

For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food—

(a) The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U. S. Inspected and Condemned", and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U. S. Inspected and Passed", and shall be deemed fit for use in the manufacture of process or renovated butter.

(b) The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked "U. S. Inspected and Passed". Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit

for human food shall be denatured or destroyed under the supervision of the inspector.

(c) The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing in any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

(d) The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

(e) The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. The Secretary of Agriculture may, from time to time, by regulations define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

(f) The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

(g) No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or knowingly alter, deface, or destroy, or use without proper authority, any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

(h) All process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

(i) No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

(j) No person, firm, or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder.

(k) The administration and enforcement of the provisions of this Act, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients intended to be used in the manufacture of process or renovated butter and the denaturing or destruction of process or renovated butter, are committed exclusively to the Secretary of Agriculture: *Provided*, That any powers and duties of the Food and Drug Administration of the Federal Security Agency under the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C., 1940 edition, 301, and the following), as regards such ingredients before they come into the possession of the manufacturers of process or renovated butter, or as regards such powers and duties in connection with process or renovated butter after it leaves such manufacturers and comes into the hands of wholesale or retail dealers, or others, shall not be affected

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by this Act. 53 Stat. 254, amended June 24, 1946, c. 459, § 1, 60 Stat. 300.

Historical Note

References in Text. This Act, referred to in text, refers to sections 2325-2327 of this title.

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in the text, has been classified to sections 301, 321, 331-392 of Title 21, Food and Drugs.

1946 Amendment. Act June 24, 1946, amended section generally to establish and maintain continuous inspection of all qualified establishments which manufacture process or renovated butter.

Saving Clause. Section 4 of Act June 24, 1946, provided: "If any provision of this Act [sections 2325-2327 of this title] or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act [said sections] and of the application of such provision to other persons or circumstances shall not be affected thereby."

Transfer of Functions. All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see Volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act June 24, 1946, see 1946 U.S. Code Cong. Service, pp. 1207, 1228.

§ 2326. Penalties

(a) Adulterated butter

(1) **False branding; sale, packing, or stamping in violation of law.** Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tin-plate, or paper packages as described in subsection (c) of section 2323, or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than \$1,000 and be imprisoned not more than two years.

(2) **Omission or removal of label.** Every manufacturer of adulterated butter who neglects to affix the label required under paragraph (1) of subsection (b) of section 2322 to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined \$50 for each package in respect to which such offense is committed.

(b) **Failure of wholesale dealers to keep or permit inspection of books, or to render returns.** Any person who willfully violates any of the provisions of section 2324 shall for each such offense be fined not less than \$50 and not exceeding \$500, and imprisoned not less than thirty days nor more than six months.

(c) **Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.** Any person, firm, or corporation violating any of the provisions of section 2325 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment in the discretion of the court. 53 Stat. 255, amended June 24, 1946, c. 459, § 2, 60 Stat. 302.

Historical Note

1946 Amendment. Subsec. (c) amended by Act June 24, 1946, which increased the penalty from a fine of not less than \$30 nor more than \$500 or by imprisonment

for not less than one month nor more than six months to a fine of not more than \$1,000 or by imprisonment for not more than six months.

Savings Clause. Savings clause, see note set out under section 2325 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date,

see Volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act June 24, 1946, see 1946 U.S. Code Cong. Service, pp. 1207, 1226.

§ 2327. Other laws applicable

(a) **Oleomargarine.** The provisions of sections 2301(c) (2), 2305 to 2311 inclusive (except subsections (a), (b), and (h) of section 2308), and section 3791(a) (1), shall apply to manufacturers of adulterated butter to an extent necessary to enforce the marking, branding, identification, and regulation of the exportation and importation of adulterated butter.

(b), (c) **Omitted.** June 24, 1946, c. 459, § 3, 60 Stat. 302.

(d) **Tobacco and snuff.** The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in section 2321(c) (1). 53 Stat. 255, amended June 24, 1946, c. 459, § 3, 60 Stat. 302.

Historical Note

References in Text. Section 2301(c) (2), referred to in subsec. (a), which related to assessment of tax on oleomargarine, was repealed by Act Mar. 16, 1950, c. 61, § 1, 64 Stat. 20, eff. July 1, 1950.

1946 Amendment. Subsecs. (b) and (c) omitted by Act June 24, 1946.

Such subsecs. provided:

"(b) **Inspection of Live Cattle and Meat.** All parts of an act providing for an inspection of meats for exportation, approved Aug. 30, 1890, c. 839, 26 Stat. 414, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March 3, 1891, c. 555, 26 Stat. 1089, and of amendment thereto approved March 2, 1895, c. 169, § 1, 28 Stat. 732, which are applicable to the subjects and purposes described in section 2325 shall apply to process or renovated butter.

"(c) **Slaughtering and Meat Canning.** The sanitary provisions for slaughtering, meat canning, or similar establishments as set forth in the act of June 30, 1906, c. 3913, 34 Stat. 878, shall be extended to cover renovated butter factories as defined in this subchapter, under such regulations as the Secretary of Agriculture may prescribe."

Savings Clause. Savings clause, see note set out under section 2325 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act June 24, 1946, see 1946 U.S. Code Cong. Service, pp. 1207, 1226.

CHAPTER 17.—FILLED CHEESE

Sec.

- 2350. Definitions.
- 2351. Tax.
- 2352. Manufacturers.
- 2353. Wholesale dealers.
- 2354. Retail dealers.
- 2355. Stamps on emptied packages.
- 2356. Importation.
- 2357. Penalties.
- 2358. Forfeitures.
- 2359. Recovery of penalties and forfeitures.
- 2360. Commissioner's decisions.
- 2361. Tobacco stamp laws applicable.
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Historical Note

Federal Food, Drug, and Cosmetic Act. By virtue of Act June 25, 1938, c. 675, § 902(c), 52 Stat. 1059, nothing contained in chapter 9 of Title 21, Food and Drugs,

shall be construed as in any way affecting, modifying, repealing, or superseding the original provisions of this chapter.

§ 2350. Definitions

For the purpose of this chapter and sections 3210 and 3211—

(a) **Cheese.** The word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(b) **Filled cheese.** Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this chapter. 53 Stat. 256.

§ 2351. Tax

(a) **Rate.** Upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of 1 cent per pound; and any fractional part of a pound in a package shall be taxed as a pound.

(b) **By whom paid.** The tax levied by subsection (a) shall be paid by the manufacturer.

(c) How paid

(1) **Stamps.** The tax levied by subsection (a) shall be represented by coupon stamps.

(2) **Assessment.** Whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

(d) **Special tax**

For special tax on manufacturers and dealers, see section 3210.

(e) **Imported filled cheese**

For tax on imported filled cheese, see section 2356.
53 Stat. 256.

§ 2352. **Manufacturers**

(a) **Definition.** Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(b) **Packing requirements**

(1) **Marks, stamps, and packages.** Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) **Label.** Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(c) **Books and returns.** Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of materials and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

(d) **Factory number and signs.** Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may by regulation require.

(e) **Bonds.** Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner. 53 Stat. 257.

§ 2353. **Wholesale dealers**

(a) **Definition.** Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in section 2354(a), shall be deemed a wholesale dealer in filled cheese.

(b) **Signs.** All wholesale dealers in filled cheese shall display in a conspicuous place in his or their salesroom a sign bearing the words

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"Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. 53 Stat. 257.

§ 2354. Retail dealers

(a) **Definition.** Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

(b) **Selling requirements.** Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner with the approval of the Secretary.

(c) **Signs.** All retail dealers in filled cheese shall display in a conspicuous place in his or their salesroom, a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. 53 Stat. 257.

§ 2355. Stamps on emptied packages

Whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon. 53 Stat. 258.

§ 2356. Importation

All filled cheese as defined in section 2350(b) imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of 8 cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. 53 Stat. 258.

§ 2357. Penalties

(a) **Failure to comply with section 2352(c) to (e).** Any manufacturer of filled cheese who fails to comply with the provisions of subsections (c), (d), and (e) of section 2352, or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 nor more than \$1,000.

(b) **False branding; sale, packing, or stamping in violation of law.** Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in subsection (b) of section 2354, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than \$50 and not more than \$500 or be imprisoned not less than 30 days nor more than one year.

(c) **Failure of wholesale and retail dealers to display signs.** Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of sections 2353(b) and 2354(c) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than \$50 and not more than \$200.

(d) **Omission or removal of label.** Every manufacturer of filled cheese who neglects to affix the label provided for in paragraph (2) of section 2352(b) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes

any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

(e) **Purchasing when special tax not paid.** Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 3210 of chapter 27 shall be liable, for each offense, to a penalty of \$100.

(f) **Purchasing when not stamped, branded, or marked according to law.** Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of \$50 for each such offense.

(g) **Failure to destroy stamps on emptied packages.** Any person who willfully neglects or refuses to destroy the stamps on any empty package which contained filled cheese shall, for each such offense, be fined not exceeding \$50 or imprisoned not less than ten days nor more than six months. 53 Stat. 258.

§ 2358. Forfeitures

(a) **Purchasing when special tax not paid.** Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 3210 of chapter 27 shall be liable, for each offense, to a forfeiture of all articles so purchased or received, or of the full value thereof.

(b) **Packages unstamped, unmarked, or deleterious.** All packages of filled cheese subject to tax under this chapter that shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients adjudged as hereinafter provided to be deleterious to the public health, shall be forfeited to the United States. 53 Stat. 259.

§ 2359. Recovery of penalties and forfeitures

All fines, penalties, and forfeitures imposed by this chapter or section 3211 may be recovered in any court of competent jurisdiction. 53 Stat. 259.

§ 2360. Commissioner's decisions

(a) **Deleterious ingredients.** The Commissioner is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health.

(b) **Appeal.** In case of doubt or contest the decision of the Commissioner in the class of cases referred to in subsection (a) may be appealed from to a board constituted for the purpose, and composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises. 53 Stat. 259.

§ 2361. Tobacco stamp laws applicable

The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (c) of section 2351. 53 Stat. 259.

§ 2362. Regulations

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of the provisions of this chapter and sections 3210 and 3211, see section 3791(a) (1).

53 Stat. 259.

CHAPTER 18.—REPEALED

§§ 2380-2390. Repealed. Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title VI, § 619, 56 Stat. 979.

Historical Note

Sections, Act Feb. 10, 1939, c. 2, §§ 2380-2390, 53 Stat. 260-263, related to tax on mixed flour.

Effective Date. Sections 2380-2390 were repealed by Act Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title VI, § 619, 56 Stat. 979, effective on the first day of the first month which begins more than ten days after Oct. 21, 1942.

Sections Prior to Repeal:

"Sec. 2380. Mixed Flour Defined.

"For the purposes of this chapter and section 3215, the words 'mixed flour' shall be taken and construed to mean the food product resulting from the grinding or mixing together of wheat, or wheat flour, as the principal constituent in quantity, with any other grain, or the product of any other grain, or other material, except such material, and not the product of any grain, as is commonly used for baking purposes: Provided, That when the product resulting from the grinding or mixing together of wheat or wheat flour with any other grain, or the product of any other grain, of which wheat or wheat flour is not the principal constituent as specified in the foregoing definition, is intended for sale, or is sold, or offered for sale as wheat flour, such product shall be held to be mixed flour within the meaning of this chapter and section 3215.

"Sec. 2381. Tax.

"(a) **Rate.**—Upon the manufacture and sale of mixed flour there shall be levied a tax of 4 cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; 2 cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; 1 cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one-half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less.

"(b) **By Whom Paid.**—The tax levied by subsection (a) shall be paid by the person, firm, or corporation making or packing mixed flour.

"(c) **How Paid.**—

"(1) **Stamps.**—The tax levied by subsection (a) shall be represented by coupon stamps.

"(2) **Assessment.**—Whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this chapter has not been paid, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of

tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this chapter for an unauthorized sale or removal.

"(d) **Imported Mixed Flour.**—

"For tax on imported mixed flour, see section 2384.

"(e) **Exemption, Repacked Flour.**—

"For exemption of repacked flour from tax, see section 2382(b) (1).

"(f) **Special Tax.**—

"For special tax on manufacturers and packers, see section 3215.

"Sec. 2382. Requirements on Manufacturers or Packers.

"(a) **Packages.**—

"(1) **Weight.**—Barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds.

"(2) **Reuse.**—All sales and consignments of mixed flour shall be in packages not before used for that purpose.

"(3) **Marks and brands.**—Every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words 'mixed flour' in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed.

"(4) **Contents card.**—In addition to the requirements under paragraph (3), the maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words 'mixed flour,' together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed.

"(5) **Label.**—In addition to the branding and marking of mixed flour as provided in this chapter, there shall be affixed to the packages containing the same a label in the following words: 'Notice.'—The (manufacturer or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases.

"(b) **Repacking.**—

"(1) **Exemption from tax.**—When mixed flour, on the manufacture and sale of which the tax imposed by this chapter has been paid, is sold and then repacked

without the addition of any other material, such repacked flour shall not be liable to any additional tax.

"(2) Marks, brands, and contents cards.—The packages containing the repacked flour referred to in paragraph (1) of this subsection shall be branded and marked as required by paragraph (3) of subsection (a), and shall contain the card provided for in paragraph (4) of subsection (a).

"(3) Notice.—In addition to the requirements under paragraphs (1) and (2), the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words: 'Notice.—The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid.'

"Sec. 2383. Stamps on Emptied Packages.

"Whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon.

"Sec. 2384. Importation.

"All mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal revenue tax equal in amount to the tax imposed under subsection (a) of section 2381, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States.

"Sec. 2385. Exportation.

"Mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affixing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner, with the approval of the Secretary, may prescribe. Every person, firm, or corporation who shall export mixed flour shall plainly mark on each package containing the same the words 'mixed flour,' and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the provisions of this chapter.

"Sec. 2386. Penalties.

"(a) Omission of Marks, Brands, or Contents Cards.—Any person, firm, or corporation making, packing, or repacking mixed flour, failing to comply with the provisions of paragraphs (3) and (4) of subsection (a) of section 2382, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$250 and not more than \$500, or be imprisoned not less than sixty days nor more than one year.

"(b) Omission or Removal of Labels.—Every person, firm, or corporation failing or neglecting to affix the label required by paragraph (5) of subsection (a) of section 2382 to any package containing mixed flour made or packed by him or them, or who removes from any such

package any label so affixed, shall, upon conviction thereof, be fined not less than \$50 for each label so removed.

"(c) Sale or Packing in Violation of Law; Falsification or Unlawful Removal of Brands.—Every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this chapter, or who packs in any package or packages any mixed flour in any manner contrary to the provisions of this chapter, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than \$250 and not more than \$500, or by imprisonment not less than thirty days nor more than one year.

"(d) Failure to Pay Tax; Excessive Weight; Improper Marking or Branding on Repacking.—Any person violating the provisions of section 2381(b) and (c) (1) or section 2382(a) (1) and (b), shall, upon conviction thereof, be punished by a fine of not less than \$250 and not more than \$500, or by imprisonment not to exceed one year.

"(e) Purchasing When Tax Not Paid.—Any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax provided in this chapter, or section 3215(a), shall, for each offense, be fined not less than \$50, and forfeit to the United States all the articles so purchased or received, or the full value thereof.

"(f) Purchasing Imported Flour Without Brands, Labels, or Stamps.—Any person, firm, or corporation purchasing or receiving for sale or repacking any mixed flour imported from foreign countries, which has not been branded, labeled, or stamped, as required by this chapter, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this chapter shall, upon conviction, be fined not less than \$50 nor more than \$500.

"(g) Failure to Destroy Stamps or Marks on Empty Packages.—Any person disposing of an empty package which contained mixed flour without first having destroyed the stamp or mark or marks thereon, shall, upon conviction, be punished by a fine not exceeding the sum of \$25.

"(h) Second Offense.—Any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of this chapter or of section 3215, shall, in addition to the penalties imposed by this chapter, be imprisoned not less than thirty days nor more than ninety days.

"Sec. 2387. Recovery of Penalties and Forfeitures.

"All fines, penalties, and forfeitures imposed by section 2386 or 3215 may be recovered in any court of competent jurisdiction.

"Sec. 2388. Tobacco Stamp Laws Applicable.

"(a) The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in section 2381(c) (1).

"(b) All administrative, special, or stamp provisions of law, including the laws in relation to assessment of taxes, not specifically repealed, shall be applicable to this chapter and to section 3215.

"Sec. 2389. Regulations.

"For authority of the Commissioner, with the approval of the Secretary, to

make all needful rules and regulations for carrying into effect the provisions of this chapter and of section 3215, see section 3791(a) (1).

"Sec. 2390. Contracts for Stamps.

"The Commissioner, with the approval of the Secretary, is authorized to procure any of the stamps provided in this chapter by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing, and said contracts shall be awarded under such terms, restrictions, and regulations as may be prescribed by the Commissioner, with the approval of the Secretary."

CHAPTER 19.—RETAILERS' EXCISE TAXES

Sec.

2400. Tax on jewelry, etc.

2401. Tax on furs.

2402. Tax on toilet preparations.

2403. Return and payment of retailers' excise taxes.

2404. Definition of sale.

2405. Leases, conditional sales, etc.

2406. Tax-free sales.

2407. Credits and refunds.

2408. Applicability of administrative provisions.

2409. Penalty for representation that tax is not passed on.

2410. Rules and regulations.

2411. Effective date.

2412. Auction sales of jewelry and furs.

2413. Sales by United States, etc.

Historical Note

Chapter was added by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 552(a), 55 Stat. 718, which was made

effective on Oct. 1, 1941, by section 558 of that Act.

§ 2400. Tax on jewelry, etc.

There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; watches and clocks and cases and movements thereof; gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars. The tax imposed by this section shall not apply to any article used for religious purposes, to surgical instruments, to watches designed especially for use by the blind, to frames or mountings for spectacles or eye-glasses, to a fountain pen, mechanical pencil, or smokers' pipe if the only parts of the pen, the pencil, or the pipe which consist of precious metals are essential parts not used for ornamental purposes, or to buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 718, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 613, 56 Stat. 977; Feb. 25, 1944,

12:49 p. m., E. W. T., c. 63, Title III, § 310, 58 Stat. 69; Aug. 11, 1945, c. 367, § 1, 59 Stat. 532.

Historical Note

1945 Amendment. Act Aug. 11, 1945, amended section by striking out "to a fountain pen or smokers' pipe if the only parts of the pen or the pipe" in the second sentence and inserting in lieu thereof "to a fountain pen, mechanical pencil, or smokers' pipe, if the only parts of the pen, the pencil, or the pipe".

1944 Amendment. Act Feb. 25, 1944, amended section by striking out "gold, gold plated, silver, silver-plated, or sterling flatware or hollow ware" and inserting in lieu thereof "gold, gold plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware".

1942 Amendment. Second sentence amended by Act Oct. 21, 1942.

Effective Date of 1945 Amendment. Act Aug. 11, 1945, became effective on the first day of the first month which began more than ten days after Aug. 11, 1945, by section 2 thereof.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on the first day of the first month which began more than ten days after the date of the enactment of this Act, by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Termination of War Tax Rates. The effective period of the war tax rates provided for in section 1650 of this title, which had temporarily affected permanent rates specified in these sections, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954, c. 126, Title V, § 504(a), 68 Stat. 42. See such section 1650, and notes thereunder; and for effective date of such amendment to section 1650, in so far as it affects rates imposed by these sections, see note under section 1651 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2401. Tax on furs

There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material. Where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces an article of the kind described in this section from fur on the hide or pelt furnished, directly or indirectly, by a customer and the article is for the use of, and not for resale by, such customer, the transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article at retail for purposes of this section. The tax on such a transaction shall be computed and paid by such person upon the fair retail market value, as determined by the Commissioner, of the finished article. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 718, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 303, 58 Stat. 63; Mar. 11, 1947, c. 17, § 7(a), 61 Stat. 12.

Historical Note

1947 Amendment. Act Mar. 11, 1947, amended section by inserting "but only if * * * valuable component material", following "chief value".

1944 Amendment. Act Feb. 25, 1944, amended section by adding sentence beginning "Where a person etc.".

Effective Date of 1947 Amendment. Subsec. (b) of section 7 of Act Mar. 11, 1947, provided that the amendment of

section by subsec. (a) of said section 7 should apply in the case of articles sold on or after the first day of the first month which begins more than twenty days after Mar. 11, 1947.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, made effective on the first day of the first month which begins more than 10 days after the date of the enactment of this Act by section 301 thereof.

§ 2401

RETAILERS' EXCISE TAXES

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Termination of War Tax Rates. See note set out under section 2400 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Mar. 11, 1947, see 1947 U.S.Code Cong.Service, p. 965.

§ 2402. Tax on toilet preparations

(a) **Tax.** There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes. The tax imposed by this subsection shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the care of babies.

(b) **Beauty parlors, etc.** For the purposes of subsection (a), the sale of any article described in such subsection to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof, or for resale, and the sale of miniature samples of any such article for demonstration use only to a house-to-house salesman by the manufacturer or distributor, shall not be considered as a sale at retail. The resale of such article at retail by such person, or the resale of such sample at retail by such house-to-house salesman, shall be subject to the provisions of subsection (a). Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 713, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 623, 56 Stat. 981; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 431, 65 Stat. 523.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 431(a) to add last sentence.

Subsec. (b) amended by Act Oct. 20, 1951, § 431(b), to sales to barber shops, beauty parlors, etc., and sales of samples for house-to-house demonstrations shall not be considered a sale at retail but any resale shall be subject to subsec. (a) of this section.

1942 Amendment. Subsec. (b) amended by Act Oct. 21, 1942.

Effective Date of 1951 Amendment. Amendment of subsecs. (a) and (b) made applicable only to articles sold on or after Nov. 1, 1951, by section 432 of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on

the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Termination of War Tax Rates. See note set out under section 2401.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2403. Return and payment of retailers' excise taxes

(a) Every person who sells at retail any article taxable under this chapter shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such

times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid.

(c) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations. There shall also be excluded, if stated as a separate charge, the amount of any retail sales tax imposed by any State or Territory or political subdivision of the foregoing, or the District of Columbia, whether the liability for such tax is imposed on the vendor or the vendee. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 718.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2404. Definition of sale

For the purposes of this chapter, the lease of an article shall be considered the sale of such article. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 719.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2405. Leases, conditional sales, etc.

In the case of (a) a lease, (b) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, (c) a conditional sale, or (d) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment. No tax shall be imposed under this chapter on the sale of any article taxable under section 2400 or section 2401 if with respect to such article the lease, contract for sale, or conditional sale was made, delivery thereunder was made, and a part of the consideration was paid, before October 1, 1941. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 719, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 618(a), 56 Stat. 979.

Historical Note

1942 Amendment. Clause (d) inserted by Act Oct. 21, 1942.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on

the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

§ 2405

RETAILERS' EXCISE TAXES

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2406. Tax-free sales

Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—

(a) for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia;

(b) for export, or for shipment to a possession of the United States, and in due course so exported or shipped. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 719, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (1), 58 Stat. 64.

Historical Note

1944 Amendment. Subsec. (a) amended by Act Feb. 25, 1944, which changed "the United States, any State, Territory of the United States," to read "any State, Territory of the United States".

Effective Date of 1944 Amendment. Amendment of subsec. (a) by Act Feb. 25, 1944, § 307(a) (1), was made applicable by section 307(b) (1) thereof, which provided: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(1) The amendments of sections 2406(a), 3411(c), and 3442(3) (except as such section relates to the articles enumerated in section 3404) of the Internal Revenue Code shall be applicable to sales made on or after the first day of the first month which begins three months or more after the date of the enactment of this Act. Such amendments shall not apply to deny an exemption otherwise applicable with respect to any article sold pursuant to a contract entered into prior to the effective date of the amendments, or to any agreement or change order supplemental to such contract bearing the same Government contract number.'"

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 576, provided: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2407. Credits and refunds

(a) A credit against tax under this chapter, or a refund, may be allowed with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article, or by a bona fide discount, rebate, or allowance, in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(b) No overpayment of tax under this chapter shall be credited or refunded, in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the purchaser, or (2) that he has repaid the amount of the tax to the purchaser of the article, or unless he files with the Commissioner written consent of such purchaser to the allowance of the credit or refund. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 719.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2408. Applicability of administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 720.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2409. Penalty for representation that tax is not passed on

Whoever in connection with the sale or lease, or offer for sale or lease, of any article taxable under this chapter, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by this chapter, shall on conviction thereof be punished by a fine of not more than \$1,000. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 720.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2410. Rules and regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 720.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2411. Effective date

This chapter shall be effective on and after October 1, 1941. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(a), 55 Stat. 720.

Historical Note

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 2412. Auction sales of jewelry and furs

(a) **In general.** For the purposes of sections 2400 and 2401 the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. In the case of articles so sold, the auctioneer or other agent shall, for the purposes of section 2403, be considered the "person who sells at retail".

§ 2412

RETAILERS' EXCISE TAXES

(b) Exemption of \$100 in case of auction sale at private home.

(1) In the case of an auction sale held at the home of a person whose articles are being sold, any taxable article (as defined in paragraph (2)) of such person sold by the auctioneer shall be exempt from the tax imposed by section 2400 or 2401 except to the extent that the price for which such article is sold, when added to the sum of the sale prices of all other taxable articles of such person previously sold at the same auction, exceeds \$100.

(2) For the purposes of this subsection—

(A) the term "taxable article" means an article which, by reason of subsection (a) of this section and without regard to the exemption provided in paragraph (1), is taxable under section 2400 or 2401 when sold at auction; and

(B) in the case of articles of a decedent sold on behalf of the legal representative of his estate, an auction sale held at the home of such decedent shall be considered as "held at the home of a person whose articles are being sold". Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 601, 64 Stat. 963.

Historical Note

Effective Date. Section 610 of Act Sept. 23, 1950, provided that: "The amendments made by sections 601, 602, 605, and 606 [sections 2412 and 2413 of this title and amendments of sections 3403-3405, 3443(a) (1), and 3444 of this title] shall be effective only with respect to articles sold on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act. For the purposes of this section an article shall be considered as sold prior to such first day if possession thereto,

or the right of possession thereto, passed to the purchaser before such first day."

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 2413. Sales by United States, etc.

The taxes imposed by this chapter and by section 1651 shall apply with respect to articles sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes. Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 602, 64 Stat. 963.

Historical Note

Effective Date. Section as effective only with respect to articles sold on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amend-

ment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

CHAPTER 20.—SPECIAL FUELS

Sec.

- 2450. Tax.
- 2451. Returns and payment.
- 2452. Credits and refunds.
- 2453. Tax-free sales.
- 2454. Applicability of administrative provisions.
- 2455. Rules and regulations.
- 2456. Exemption of special motor fuels used for certain vessels.

Historical Note

1954 Amendment. Chapter heading amended by Act Mar. 31, 1954, c. 126, Title V, § 507(c) (4), 68 Stat. 45, which substituted "Special Fuels" for "Diesel Fuel".

Effective Date of 1954 Amendment. Section 507(d) of Act Mar. 31, 1954, provided: "The amendments made by this section [to the heading of this chapter and to sections 2450, 2452(a), 2453, 2456 (added), 3412(c) (2), and 3443(a) (3) (A) of this title] shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act [March 31, 1954]."

However, the tax imposed under section 2450(b) shall not apply to any liquid which has been sold by a producer or importer prior to the effective date of this section [March 31, 1954] and which is taxable under section 3412 (relating to gasoline tax) as in effect prior to the effective date of this section [March 31, 1954]."

Effective Date. Chapter added by section 441(a) of Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title IV, 65 Stat. 523, and made effective on Nov. 1, 1951, by section 441(b) of said Act Oct. 20, 1951.

§ 2450. Tax

(a) **Diesel fuel.** There is hereby imposed a tax of 2 cents a gallon upon any liquid (other than any product taxable under section 3412)—

(1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or

(2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under paragraph (1).

(b) **Special motor fuels.** There is hereby imposed a tax of 2 cents a gallon upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 3412 or subsection (a) of this section)—

(1) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion of such motor vehicle, motorboat, or airplane; or

(2) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane unless there was a taxable sale of such liquid under paragraph (1).

(c) **Rate reduction.** On and after April 1, 1955, the taxes imposed by this section shall be 1½ cents a gallon in lieu of 2 cents a gallon. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523, amended Mar. 31, 1954, c. 126, Title V, § 507(b), 68 Stat. 44.

Historical Note

1954 Amendment. Act Mar. 31, 1954 amended section by substituting "Tax" for "Tax on diesel fuel" in the catchline, by dividing section into subsections with appropriate subsection catchlines, by inserting the provisions (subsection (b)) relating to tax on special motor fuels, and by extending the date for reduction of the taxes from 2 cents to 1½ cents a

gallon from April 1, 1954 to April 1, 1955.

Effective Date of 1954 Amendment. Effective date of amendment of this section by Act Mar. 31, 1954, as May 1, 1954, see note preceding this section.

Exemption from Tax of Special Motor Fuels for Certain Vessels. Special motor fuels for certain vessels as exempt from

tax imposed by subsection (b) of this section, see section 2456 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Act Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 2451. Returns and payment

(a) **Requirement.** Every person liable for tax under this chapter shall make returns and pay the taxes due to the collector for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Secretary may by regulations prescribe.

(b) **Interest.** The tax shall, without assessment or notice, be due and payable to the collector at the time prescribed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523.

Historical Note

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 2452. Credits and refunds

(a) **Nontaxable use or sale by vendee.** A credit against tax under this chapter, or a refund, may be allowed or made to a person in the amount of tax paid by him under this chapter with respect to his sale of any liquid to a vendee for use as fuel in a diesel-powered highway vehicle, or with respect to his sale of benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid to a vendee for use as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if such person establishes, in accordance with regulations prescribed by the Secretary, that—

(1) either—

(A) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid; or

(B) such liquid was used or was resold for use for any of the purposes, but subject to the conditions, provided in section 3451; and

(2) such person has repaid or agreed to repay the amount of such tax to such vendee, or has obtained the consent of the vendee to the allowance of the credit or refund.

No interest shall be allowed with respect to any amount of tax credited or refunded under the provisions of this subsection.

(b) **Proof required in case of certain overpayments.** No overpayment of tax under this chapter shall be credited or refunded (otherwise than under subsection (a)) in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the

amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or files with the Secretary written consent of such ultimate purchaser to the allowance of the credit or refund. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523, amended Mar. 31, 1954, c. 126, Title V, § 507(c) (1), 68 Stat. 44.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which inserted the provisions relating to credits and refunds with respect to taxes on sales of benzol, benzene, naphtha, liquefied petroleum, and other liquids to vendees for certain uses.

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) of this section by Act Mar. 31, 1954, as May 1, 1954, see note preceding section 2450 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Act Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 2453. Tax-free sales

Under regulations prescribed by the Secretary, no tax under this chapter shall be imposed with respect to the sale of any liquid for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid covered by this chapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523, amended Mar. 31, 1954, c. 126, Title V, § 507(c) (2), 68 Stat. 45.

Historical Note

1954 Amendment. Act Mar. 31, 1953 substituted "covered by this chapter" for "as fuel in a diesel-powered highway vehicle".

Effective Date of 1954 Amendment. Effective date of amendment of this section by Act Mar. 31, 1954, as May 1, 1954, see note preceding section 2450 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its applica-

tion would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Act Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 2454. Applicability of administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523.

Historical Note

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its

application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 2455. Rules and regulations

The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 441(a), 65 Stat. 523.

Historical Note

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its applica-

tion would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 2456. Exemption of special motor fuels used for certain vessels

The exemption from tax under chapter 29 provided in section 3451 shall also apply to the tax imposed under section 2450(b). Added Mar. 31, 1954, c. 126, Title V, § 507(c) (3), 68 Stat. 45.

Historical Note

Effective Date. Effective date of this section, as May 1, 1954, see note preceding section 2450 of this title.

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

CHAPTER 21.—COCONUT AND OTHER VEGETABLE OILS

Sec.

- 2470. Tax.
- 2471. Returns.
- 2472. Payment of tax.
- 2473. Sales to States or political subdivisions.
- 2474. Exportation.
- 2475. Addition to the tax in case of nonpayment.
- 2476. Repealed.
- 2477. First domestic processing defined.
- 2478. Contracts prior to January 26, 1934.
- 2479. Other laws applicable.
- 2480. Covering of collections into the Treasury.
- 2481. Effective date of chapter.
- 2482. Publicity of returns.
- 2483. [Payment of proceeds of processing tax to Guam and American Samoa].

§ 2470. Tax

(a) Rate

(1) **In general.** There shall be imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor.

(2) **Additional rate on coconut oil.** There shall be imposed (in addition to the tax imposed by the preceding paragraph) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing. The additional tax imposed by this paragraph shall not apply when it is established, in accordance with regulations prescribed by the Secretary, that the coconut oil (whether or not contained in a combination or mixture) (A) is wholly the production of the Philippine Islands, any possession of the United States, or the Terri-

tory of the Pacific Islands (hereinafter in this paragraph referred to as the "Trust Territory"), or (B) was produced wholly from materials the growth or production of the Philippine Islands, any possessions of the United States, or the Trust Territory: *Provided, however*, That such additional tax shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the Trust Territory, to such extent, and at such time after the date of the applicable proclamation, as the President, after taking into account the responsibilities of the United States with respect to the economy of the Trust Territory, shall hereafter determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world. The tax imposed by this paragraph shall not apply to any domestic processing after July 3, 1974.

(b) **Exemption.** The tax under subsection (a) shall not apply (1) with respect to any fatty acid or salt resulting from a previous first domestic processing taxed under this section or upon which an import tax has been paid under chapter 22, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under chapter 22.

(c) **Importations prior to August 21, 1936.** Notwithstanding the provisions of subsections (a) and (b) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or¹ such oil contained therein was imported prior to August 21, 1936, shall be taxed in accordance with the provisions of section 602½ of the Revenue Act of 1934, 48 Stat. 763, in force on June 22, 1936. 53 Stat. 264, amended Apr. 30, 1946, c. 244, Title V, § 505(a), 60 Stat. 157; June 12, 1952, c. 420, § 1, 66 Stat. 136.

¹ So in original. Probably should read "of".

Historical Note

1952 Amendment. Subsec. (a) (2) amended by Act June 12, 1952, to extend its provisions to the Trust Territory of the Pacific Islands.

1946 Amendment. Subsec. (a) (2) amended by Act Apr. 30, 1946, which struck out "other" preceding "possession" in clauses (A) and (B), and added sentence "The tax imposed * * * July 3, 1974".

Effective Date of 1952 Amendment. Section 2 of Act June 12, 1952, provided that this amendment should be effective only after June 12, 1952.

Effective Date of 1946 Amendment. Amendment of this section by Act Apr. 30, 1946, was made effective on May 1, 1946, by section 512 of said Act which is set out as a note under section 1251 of Title 22, Foreign Relations and Intercourse.

Termination of Suspension of Additional Rate on Coconut Oil. By Proc.No.2847, July 28, 1940, 14 F.R. 4773, 63 Stat. 1279,

the President found that "adequate supplies of copra and coconut oil, the product of the Philippines, are readily available for processing in the United States" and that upon the expiration of 30 days from July 28, 1940, the suspension of the provisions of subsection (a) (2) of this section will be terminated.

Suspension of Additional Rate on Coconut Oil. Act Sept. 16, 1942, c. 560, 56 Stat. 752, as amended June 30, 1944, c. 332, § 1, 58 Stat. 647, which suspended the additional rate on coconut oil terminated on June 30, 1946 by section 2 of said Act Sept. 16, 1942.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act June 12, 1952 see 1952 U.S.Code Cong. and Adm.News, p. 1514.

§ 2471. Returns

Each processor required to pay the tax imposed by section 2470 shall make monthly returns under oath in duplicate and pay the tax to the collector for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to

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the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. 53 Stat. 265.

§ 2472. Payment of tax

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable by the processor to the collector for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland, at the time so fixed for filing the return. 53 Stat. 265.

§ 2473. Sales to States or political subdivisions

Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under section 2470 shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article. 53 Stat. 265.

§ 2474. Exportation

Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this chapter, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this chapter requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by section 2470. 53 Stat. 265.

§ 2475. Addition to the tax in case of nonpayment

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. 53 Stat. 265.

§ 2476. Repealed. Apr. 30, 1946, c. 244, Title V, § 506(b), 60 Stat. 157, eff. July 4, 1946.

Historical Note

Section, Act Feb. 10, 1939, c. 2, § 2476, 53 Stat. 265, related to covering collections into the Philippine Treasury.

Section Prior to Repeal:

"§ 2476. Collections covered into the Philippine Treasury.

"All taxes collected under this chapter with respect to coconut oil wholly of Philippine production or produced from

materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this section."

§ 2477. First domestic processing defined

For the purposes of this chapter, the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of iron or steel products, or tin plate or terne plate, or any subse-

quent use of palm oil residue resulting from the manufacture of iron or steel products, or tin plate or terne plate. 53 Stat. 266, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 621, 56 Stat. 980.

Historical Note

1942 Amendment. Words "iron or steel products" inserted in both instances by Act Oct. 21, 1942.

1942, 4:30 p. m., E. W. T., by section 601 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21,

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2478. Contracts prior to January 26, 1934

If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after May 10, 1934, of any article wholly or in chief value of an article with respect to which a tax is imposed by this chapter or of any article with respect to which a tax is imposed by this section, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this chapter. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee. 53 Stat. 266.

§ 2479. Other laws applicable

All provisions of law (including penalties) applicable in respect of taxes imposed by section 2700, shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. 53 Stat. 266.

§ 2480. Covering of collections into the Treasury

All collections except as provided in section 2476 shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States. 53 Stat. 266.

Historical Note

References in Text. Section 2476, referred to in the text, which related to covering collections into the Philippine

Treasury, was repealed by Act Apr. 30, 1946, c. 244, Title V, § 506(b), 61 Stat. 157, eff. July 4, 1946.

§ 2481. Effective date of chapter

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 266.

§ 2482. Publicity of returns

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55. 53 Stat. 266.

§ 2483. [Payment of proceeds of processing tax to Guam and American Samoa] ¹

All taxes collected under this chapter with respect to coconut oil wholly of the production of Guam or American Samoa or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the Treasury of Guam or American

Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 561(a), 55 Stat. 725.

¹ Section was enacted without a catchline. This has been supplied by editor.

Historical Note

Effective Date. Act Sept. 20, 1941, was made applicable only with respect to taxes collected after the date of enactment of that Act, by section 561(b) thereof.

CHAPTER 22.—FISH, ANIMAL, AND VEGETABLE OILS

Sec.

- 2490. Imposition of tax.
- 2491. Rate of tax.
- 2492. Construction of taxing provision.
- 2493. Assessment and payment.
- 2494. Regulations.

§ 2490. Imposition of tax

In addition to any other tax or duty imposed by law, there shall be imposed upon the following articles imported into the United States, unless treaty provisions of the United States otherwise provide, a tax at the rates set forth in section 2491, to be paid by the importer. 53 Stat. 267.

§ 2491. Rate of tax

(a) Whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), marine-animal oil, tallow, inedible animal oils, inedible animal fats, inedible animal greases, fatty acids derived from any of the foregoing, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed, 3 cents per pound: *Provided*, That no whale oil (except sperm oil), fish oil, or marine animal oil of any kind (whether or not refined, sulphonated, sulphated, hydrogenated or otherwise processed), or fatty acids derived therefrom, shall be admitted to entry, after June 30, 1939, free from the tax herein provided unless such oil was produced on vessels of the United States or in the United States or its possessions, from whales, fish, or marine animals or parts thereof taken and captured by vessels of the United States;

(b) Sesame oil provided for in paragraph 1732 of the Tariff Act of 1930, sunflower oil, rapeseed oil, kapok oil, hempseed oil, perilla oil, fatty acids derived from any of the foregoing or from linseed oil, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed, 4½ cents per pound;

(c) Any article, merchandise, or combination (except oils specified in section 2470), 10 per centum or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified above in this paragraph or of the oils, fatty acids, or salts specified in section 2470, a tax at the rate or rates per pound equal to that proportion of the rate or rates prescribed in this paragraph or such

section 2470 in respect of such product or products which the quantity by weight of the imported article, merchandise, or combination, consisting of or derived from such product or products, bears to the total weight of the imported article, merchandise, or combination; but there shall not be taxable under this subparagraph any article, merchandise, or combination (other than an oil, fat, or grease, and other than products resulting from processing seeds without full commercial extraction of the oil content), by reason of the presence therein of an oil, fat, or grease which is a natural component of such article, merchandise, or combination and has never had a separate existence as an oil, fat, or grease;

(d) Hempseed, 1.24 cents per pound; perilla seed, 1.38 cents per pound; kapok seed, 2 cents per pound; rapeseed, 2 cents per pound; and sesame seed, 1.18 cents per pound;

(e) The tax on the articles described in this section shall apply only with respect to the importation of such articles after May 10, 1934.

(f) The tax imposed under subsection (b) shall not apply to rapeseed oil imported to be used in the manufacture of rubber substitutes or lubricating oil, and the Commissioner of Customs shall, with the approval of the Secretary, prescribe methods and regulations to carry out this subsection.

(g) The taxes imposed by section 2490 shall not apply to any article, merchandise, or combination, by reason of the presence therein of any coconut oil produced in Guam or American Samoa, or any direct or indirect derivative of such oil. 53 Stat. 267.

Historical Note

References in Text. Paragraph 1732 of the Tariff Act of 1930, referred to in subsec.(b), is classified to section 1201, paragraph 1732 of Title 19, Customs Duties.

§ 2492. Construction of taxing provision

Nothing in section 2491 shall be construed as imposing a tax in contravention of an obligation undertaken in any trade agreement entered into prior to August 21, 1936, under the authority of section 350 of the Tariff Act of 1930, as amended, c. 474, 48 Stat. 943 (U.S.C., Title 19, § 1351), or as imposing a tax on the importation of glycerin or stearine pitch or on the importation of any article by reason of any component of such article derived directly or indirectly from a waste not named in section 2491. 53 Stat. 268.

§ 2493. Assessment and payment

The tax imposed under section 2490 shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that—

(1) the value on which such tax shall be based shall be the sum of (A) the dutiable value (under section 503 of such Act) of the article, plus (B) the customs duties, if any, imposed thereon under any provision of law;

(2) for the purposes of section 489 of such Act (relating to additional duties in certain cases of undervaluation) such tax shall not be considered an ad valorem rate of duty or a duty based upon or regulated in any manner by the value of the article, and for the purposes of section 336 of such Act (the so-called flexible tariff provision) such tax shall not be considered a duty;

(3) such tax (except as specifically provided in section 2491(g) with reference to certain products of Guam and American Samoa) shall be im-

posed in full notwithstanding any provision of law granting exemption from or reduction of duties to products of any possession of the United States. 53 Stat. 268.

Historical Note

References in Text. The Tariff Act of 1930, referred to in the text, is classified to chapter 4 of Title 19, Customs Duties.

Such Act, referred to in the text, refers to the Tariff Act of 1930.

Sections 336, 489 and 503 of such Act, referred to in the text, are sections of the Tariff Act of 1930 and are classified to sections 1336, 1489 and 1503, respectively, of Title 19, Customs Duties.

§ 2494. Regulations

The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 268.

CHAPTER 23.—NARCOTICS

SUBCHAPTER A.—OPIUM AND COCA LEAVES

Sec.

- 2550. Tax.
- 2551. Exemptions.
- 2552. Stamps.
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- 2554. Order forms.
- 2555. Records, statements, and returns.
- 2556. Inspection and copies of returns, duplicate order forms, and prescriptions.
- 2557. Penalties.
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SUBCHAPTER B.—OPIUM FOR SMOKING

- 2567. Tax.
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SUBCHAPTER C.—MARIHUANA

- 2590. Tax.
- 2591. Order forms.
- 2592. Stamps.
- 2593. Unlawful possession.
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- 2595. Inspection of returns, order forms and prescriptions.
- 2596. Penalties.
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- 2600. Delegation of powers.
- 2601. Other laws applicable.
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Sec.

2603. Administration in insular possessions.

2604. Definitions.

SUBCHAPTER D.—DELEGATION OF POWERS AND DUTIES BY
THE SECRETARY

2606. Authorization.

SUBCHAPTER A.—OPIUM AND COCA LEAVES

§ 2550. Tax—(a) Rate

There shall be levied, assessed, collected, and paid upon narcotic drugs produced in or imported into the United States, and sold, or removed for consumption or sale, an internal revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce. The tax imposed by this subsection shall be in addition to any import duty imposed on narcotic drugs.

(b) By whom paid. The tax imposed by subsection (a) shall be paid by the importer, manufacturer, producer, or compounder.

(c) How paid.

(1) Stamps. The tax imposed by subsection (a) shall be represented by appropriate stamps, to be provided by the Secretary.

(2) Assessment

For assessment in case of omitted taxes payable by stamp, see section 3311 and section 3640.

(3) Other methods. Whether or not the method of collecting any tax imposed by this section or by section 3220 is specifically provided therein, any such tax may, under regulations prescribed by the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Secretary determines or prescribes shall be collected in such manner.

(4) Cross reference

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(d) Registration and special tax

For requirements on importers, manufacturers, producers, dealers and practitioners to register and pay special tax, see part V of subchapter A of chapter 27.

53 Stat. 269, amended July 1, 1944, c. 377, § 1, 58 Stat. 721; Mar. 8, 1946, c. 81, § 2, 60 Stat. 39; Aug. 8, 1953, c. 394, §§ 2, 6, 67 Stat. 505, 506.

Historical Note

1953 Amendment. Subsec. (a) amended by Act. Aug. 8, 1953, § 2, which substituted "narcotic drugs" for "opium, ison-ipeacaine, coca leaves, opiate, any compound, salt, derivative, or preparation thereof".

Subsec. (a) amended by Act Aug. 8, 1953, § 6, which substituted "narcotic drugs" for "the aforesaid drugs".

1946 Amendment. Subsec. (a) amended by Act Mar. 8, 1946, which inserted "opiate" immediately following "coca leaves".

1944 Amendment. Subsec. (a) amended by Act July 1, 1944, which inserted "ison-

ipeacaine," immediately following "upon opium."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U. S. Code Cong. and Adm. News, p. 2277. See, also, Act Mar. 8, 1946, 1946 U.S. Code Cong. Service, p. 1083.

§ 2551. Exemptions

(a) **Preparations of limited narcotic content.** The provisions of this subchapter and part V of subchapter A of chapter 27 shall not be construed to apply to the manufacture, sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use, only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: *Provided*, That such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this subchapter and said part V: *Provided further*, That any manufacturer, producer, compounder, or vendor (including dispensing physicians) of the preparations and remedies mentioned in this section lawfully entitled to manufacture, produce, compound, or vend such preparations and remedies, shall keep a record of all sales, exchanges, or gifts of such preparations and remedies in such manner as the Secretary shall direct. Such record shall be preserved for a period of two years in such a way as to be readily accessible to inspection by any officer, agent or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officers named in section 2556, and every such person so possessing or disposing of such preparations and remedies shall register as required in section 3221 and, if he is not paying a tax under section 3220, he shall pay a special tax of \$1 for each year, or fractional part thereof, in which he is engaged in such occupation, to the collector of the district in which he carries on such occupation as provided in part V of subchapter A of chapter 27.

(b) **Decocainized coca leaves.** The provisions of this subchapter and part V of subchapter A of chapter 27 shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

(c) **Government and State officials—(1) Stamping drugs.**

Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business described in part V of subchapter A of chapter 27, shall not be required to stamp narcotic drugs, as hereinafter prescribed, but their right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

(2) **Registration and payment of tax**

For exemption of officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments from the requirements as to registration and the payment of special taxes, see subsection (b) of section 3222.

(3) **Cross reference**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 270, amended Aug. 8, 1953, c. 394, § 6, 67 Stat. 506.

Historical Note

1953 Amendment. Subsec. (c) (1) amended by Act Aug. 8, 1953 which substituted "narcotic drugs" for "the drugs mentioned in section 2550(a)".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date,

see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2277.

§ 2552. Stamps

(a) **Affixing.** The stamps provided in subsection (c) (1) of section 2550 shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

(b) **Other laws applicable.** All the provisions of law relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps provided for in the internal revenue laws shall, in so far as necessary, be extended and made to apply to the stamps provided in subsection (c) (1) of section 2550.

(c) **Cross reference**

For general provisions relating to stamps, see part I of subchapter A of chapter 28. 53 Stat. 271.

§ 2553. Packages—(a) General requirement

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing narcotic drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be prima facie evidence of liability to such special tax.

(b) **Exceptions in case of registered practitioners.** The provisions of subsection (a) shall not apply—

(1) **Prescriptions.**

To any person having in his or her possession any narcotic drugs or compounds of narcotic drug which have been obtained from a registered dealer in pursuance of a written or oral prescription referred to in section 2554(c) (2), issued for legitimate medical uses by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3221; and where the bottle or other container in which such narcotic drug or compound of a narcotic drug may be put up by the dealer upon said prescription bears the name and registry number of the druggist, and name and address of the patient, serial number of prescription, and name, address, and registry number of the person issuing said prescription; or

(2) **Dispensations direct to patients.**

To the dispensing, or administration, or giving away of narcotic drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this subchapter of the drugs so dispensed, administered, distributed, or given away. 53 Stat. 271, amended July 1, 1944, c. 377, § 2, 58 Stat. 721; Aug. 8, 1953, c. 394, § 6, 67 Stat. 506; Aug. 31, 1954, c. 1147, § 3, 68 Stat. 1002.

Historical Note

1954 Amendment. Subsec. (b) (1) amended by Act Aug. 31, 1954, to include within the category of practitioners authorized to dispense narcotic drugs other practitioners such as osteopaths, podiatrists, etc., and to allow the filling of certain oral prescriptions.

1953 Amendment. Act Aug. 8, 1953 amended section by striking out "any of the drugs mentioned in section 2550(a)", and "any of the aforesaid drugs", wher-

ever appearing, and inserting in lieu thereof "narcotic drugs".

1944 Amendment. Subsec. (a) amended by Act July 1, 1944, which struck word "for" following "absence of appropriate tax-paid stamps" and inserted in lieu thereof "from".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date,

see volumes "Title 26—Internal Revenue Acts".

see 1954 U.S Code Cong and Adm. News, p. 3560. See, also, Act Aug. 8, 1953, 1953 U.S. Code Cong. and Adm. News, p. 2277.

Legislative History: For legislative history and purpose of Act Aug. 31, 1954,

§ 2554. Order forms—(a) General requirement

It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary.

(b) **Exception in case of Virgin Islands.** The President is authorized and directed to issue such Executive orders as will permit those persons in the Virgin Islands of the United States lawfully entitled to sell, deal in, dispense, prescribe, and distribute narcotic drugs, to obtain said drugs from persons registered under section 3221 within the continental United States for legitimate medical purposes, without regard to the order forms described in this section.

(c) **Other exceptions.** Nothing contained in this section, section 2563, or section 2564 shall apply—

(1) Use of drugs in professional practice.

To the dispensing or distribution of narcotic drugs to a patient by a physician, dentist, veterinary surgeon, or other practitioner, registered under section 3221, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner, shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, veterinary surgeon, or other practitioner, shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in section 2556.

(2) Prescription.

To the sale, dispensing, or distribution of narcotic drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner, registered under section 3221: *Provided, however*, That (1) such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner, who shall have issued the same; (2) that such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 2556.

In lieu of a written prescription for such narcotic drugs or compounds of a narcotic drug which the Secretary, in his discretion (after considering any views expressed on the subject by the Surgeon General, United States Public Health Service; the Commissioner, United States Food and Drug Administration, the respective heads of State narcotic law enforcement agencies, and the respective secretaries of national associations representing (a) narcotic drug manufacturers, (b) physicians, and (c) pharmacists), shall find and by regulation designate to possess relatively little or no addiction liability, the sale, dispensing, or distribution may be made by a dealer to a consumer upon oral prescription of a duly registered physician, dentist, veterinary surgeon, or other practitioner, which oral prescription is reduced promptly to writing, and the writing filed and preserved by the dealer for a period of two years from the date on which such prescription is filled in such a way as to be readily accessible to inspection

by the officers, agents, employees, and officials mentioned in section 2556. In issuing an oral prescription, the prescriber shall furnish the dealer with the same information as is required by law or regulation in case of a written prescription for narcotic drugs or compounds of a narcotic drug except for the written signature of the prescriber, and the dealer who fills such prescription shall be required to inscribe such information on the written record of the prescription made, filed and preserved by him, and shall inscribe on the label of the container of the narcotic drug or compound of a narcotic drug the same information as is required in filling a written prescription. An oral prescription shall not be refilled.

If the Secretary shall subsequently determine that a narcotic drug or a compound of a narcotic drug, to which the oral prescription procedure described in the preceding paragraph has been made applicable, possesses a degree of drug addiction liability that, in his opinion, results in abusive use of such procedure, he shall by regulation publish the determination in the Federal Register. The determination shall be final, and after the expiration of a period of six months from the date of its publication, the oral prescription procedure described in the preceding paragraph shall cease to apply to the particular narcotic drug or to the particular compound of a narcotic drug which is the subject of the determination.

(3) **Exportation.** To the sale, exportation, shipment, or delivery of narcotic drugs by any person within the United States or any Territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(4) **Government and State officials.** To the sale, barter, exchange, or giving away of narcotic drugs to any officer of the United States Government or of any State, Territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, district, county, or municipal or insular hospitals or prisons.

(d) **Preservation.** Every person who shall accept any order required under subsection (a), and in pursuance thereof shall sell, barter, exchange, or give away narcotic drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section 2556.

(e) **Duplicates.** Every person who shall give an order as provided in this section to any other person for narcotic drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Secretary, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 2556.

(f) **Supply.** The Secretary shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors for sale by them to those persons who shall have registered and paid the special tax as required by sections 3221 and 3220 in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by said sections in his district. The price at

which such forms shall be sold by said collectors shall be fixed by the Secretary but shall not exceed the sum of \$1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring narcotic drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of narcotic drugs.

(g) **Unlawful use.** It shall be unlawful for any person to obtain by means of said order forms narcotic drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

(h) **Cross references—(1) Issuance in Puerto Rico and the Trust Territory of the Pacific Islands**

For issuance of order forms in Puerto Rico and the Trust Territory of the Pacific Islands, see subsection (a) of section 2564.

(2) **Transfer of duties**

For the authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 272, amended Aug. 8, 1953, c. 392, § 3, 67 Stat. 500; Aug. 8, 1953, c. 394, § 6, 67 Stat. 506; Aug. 31, 1954, c. 1147, §§ 1, 2, 68 Stat. 1001.

Historical Note

1954 Amendment. Subsec. (c) (1) the third month which begins more than ten days after Aug. 8, 1953, see note set out under section 2563.

amended by Act Aug. 31, 1954, § 1, to include within the category of practitioners authorized to dispense narcotic drugs other practitioners such as osteopaths, podiatrists, etc.

Subsec. (c) (2) amended by Act Aug. 31, 1954, § 2, to exempt those narcotics or narcotic compounds which possess little or no addiction liability from the requirement that all narcotic prescriptions must be in writing and signed by a licensed practitioner.

1953 Amendment. Subsec. (h) (1) amended by Act Aug. 8, 1953, c. 392, to eliminate references to the Philippine Islands and to substitute the Trust Territory of the Pacific Islands.

Act Aug. 8, 1953, c. 394, amended section by striking out "the drugs mentioned in section 2550(a)", "any of the drugs mentioned in section 2550(a)", and "any of the aforesaid drugs", wherever appearing, and inserting in lieu thereof "narcotic drugs."

Effective Date of 1953 Amendment. Amendment of section by Act Aug. 8, 1953, c. 392, as effective the first day of

Philippine Independence. Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, recognized the independence of the Philippines as of July 4, 1946. For text of Proc. No. 2695, see note under section 1394 of said Title 22.

Delegation of Functions. For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex.Ord.10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 3560. See, also, Acts Aug. 8, 1953, cc. 392, 394, 1953 U.S.Code Cong. and Adm. News, pp. 2255, 2277, respectively.

§ 2555. **Records, statements, and returns**

(a) **General requirement.** Every person liable to any tax imposed by this subchapter or section 3220, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Secretary may from time to time prescribe.

(b) **Books and monthly returns of importers, manufacturers, and wholesale dealers.** Importers, manufacturers, and wholesale dealers shall

keep such books and records and render such monthly returns in relation to the transactions in narcotic drugs as the Secretary may by regulations require.

(c) Returns by registrants of drugs received—(1) Requirement

Any person who shall be registered in any internal revenue district under the provisions of section 3221 shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of narcotic drugs received by him in said internal revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons, and the date when received.

(2) Cross reference

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 273, amended Aug. 8, 1953, c. 394, § 6, 67 Stat. 506.

Historical Note

1953 Amendment. Subsecs. (b) and (c) (1) amended by Act Aug. 8, 1953 which substituted "narcotic drugs" for "the aforesaid drugs" where those words appeared in each such subsection.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2277.

§ 2556. Inspection and copies of returns, duplicate order forms, and prescriptions—(a) Requirements

The duplicate order forms and the prescriptions, including the written record of oral prescriptions, required to be preserved under the provisions of section 2554(c) (2) and (e), and the statements or returns filed in the office of the collector of the district, under the provisions of section 2555(c), shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs. Each collector is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested.

(b) Cross reference

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 274, amended Aug. 8, 1953, c. 394, § 6, 67 Stat. 506; Aug. 31, 1954, c. 1147, § 4, 68 Stat. 1002.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Aug. 31, 1954, to insert following "prescriptions" the phrase "including the written record of oral prescriptions."

1953 Amendment. Subsec. (a) amended by Act Aug. 8, 1953 which substituted "narcotic drugs" for "the aforesaid drugs".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 3560. See, also, Act Aug. 8, 1953, 1953 U.S. Code Cong. and Adm. News, p. 2277.

§ 2557. Penalties—(a) Unlawful disclosure of information on returns or order forms

Any person who shall disclose the information contained in the statements or returns required under subsection (c) of section 2555 or in the duplicate order forms required in subsection (e) of section 2554, except as expressly provided in section 2556, and except for the purpose of enforcing the provisions of this subchapter or part V of subchapter A of chapter 27, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs, shall, on conviction, be fined or imprisoned as provided by subsection (b) (1).

(b) Violations in general

(1) Whoever commits an offense or conspires to commit an offense described in this subchapter, subchapter C of this chapter, or parts V or VI of subchapter A of chapter 27, for which no specific penalty is otherwise provided, shall be fined not more than \$2,000 and imprisoned not less than two or more than five years. For a second offense, the offender shall be fined not more than \$2,000 and imprisoned not less than five or more than ten years. For a third or subsequent offense, the offender shall be fined not more than \$2,000 and imprisoned not less than ten or more than twenty years. Upon conviction for a second or subsequent offense, the imposition or execution of sentence shall not be suspended and probation shall not be granted. For the purpose of this paragraph, an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of any offense the penalty for which is provided in this paragraph or in section 2(c) of the Narcotic Drugs Import and Export Act, as amended (U.S.C.A., title 21, sec. 174), or if he previously has been convicted of any offense the penalty for which was provided in section 9, chapter 1, of the Act of December 17, 1914 (38 Stat. 789), as amended; section 1, chapter 202, of the Act of May 26, 1922 (42 Stat. 596), as amended; section 12, Chapter 553, of the Act of August 2, 1937 (50 Stat. 556), as amended; or sections 2557(b) (1) or 2596 of the Internal Revenue Code enacted February 10, 1939 (ch. 2, 53 Stat. 274, 282), as amended. After conviction, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth the prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in this paragraph.

(2) Any person required under this subchapter or section 3220 to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter or section 3220, who willfully fails to pay such tax, make such return, keep such records, or supply

such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(3) Any person required under this subchapter or section 3220 of chapter 27 to collect, account for and pay over any tax imposed by this subchapter or said section 3220, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or section 3220 or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(4) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this subchapter or section 3220 or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612.

(5)-(7) Repealed. Nov. 2, 1951, c. 666, § 5(3), 65 Stat. 769.

(8) The term "person" as used in paragraphs (2), (3) and (4) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(c) Cross references

For definition of "person" as used generally in this subchapter, see subsection (a) of section 3228.

For general penalty provisions, see part III of subchapter A of chapter 28 and section 3793 of chapter 38.

53 Stat. 274, amended July 1, 1944, c. 377, § 3, 58 Stat. 721; Mar. 8, 1946, c. 81, § 3, 60 Stat. 39; Nov. 2, 1951, c. 666, §§ 2, 5(3), 65 Stat. 769; Aug. 8, 1953, c. 394, § 6, 67 Stat. 506.

Historical Note

References in Text. Section 2(c) of the Narcotic Drugs Import and Export Act, as amended, referred to in subsec. (b) (1), is classified to section 174 of Title 21, Food and Drugs.

Section 1, chapter 202, of the Act of May 20, 1922 (42 Stat. 596), as amended, referred to in subsec. (b) (1), is classified to sections 171, 173, and 174-177 of said Title 21.

Section 9, chapter 1 of the Act of December 17, 1914 (38 Stat. 789) as amended, and section 12, chapter 553, of the Act of August 2, 1937 (50 Stat. 558) as amended, referred to in subsec. (b) (1), were formerly classified to this title and repealed by Act Feb. 10, 1939, c. 2, § 4, 53 Stat. 1.

1953 Amendment. Subsec. (a) amended by Act Aug. 8, 1953 which substituted "narcotic drugs" for "the drugs mentioned in section 2550(a)".

1951 Amendment. Subsec. (b) (1) amended by Act Nov. 2, 1951, § 2, and

to incorporate therein the penalty provisions contained in former subssecs. (5), (6) and (7), and to render the penalty provisions uniform with section 174 of Title 21.

1946 Amendment. Subpars. (5) and (6) of subsec. (b) amended by Act Mar. 8, 1946, which inserted in each "opiate" immediately following "or conspiring to sell . . . isonipecaine," deleted in each "or" from phrase "preparation of opium, coca leaves, cocaine, or isonipecaine", and inserted in each immediately following such phrase "or opiate,".

1944 Amendment. Subpars. (5) and (6) of subsec. (b) amended by Act July 1, 1944, which inserted in each "isonipecaine," immediately following "or conspiring to sell, import, or export opium, coca leaves, cocaine", deleted in each "or" from phrase "preparation of opium, coca leaves, or cocaine", and inserted in each immediately following such phrase "or isonipecaine,".

Repeals. Subsecs. (b) (5), (b) (6) and (b) (7), repealed by Act Nov. 2, 1951, § 5(3), contained, generally, provisions now covered by subsec. (b) (1). Such subsecs. prior to repeal provided:

"(5) A person who, after having been convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipecaine, opiate, or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipecaine, or opiate, again sells, imports, or exports, or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such second offense, be fined not more than \$5,000 or imprisoned in a Federal penitentiary for not more than ten years, or both, in the discretion of the court, whenever the fact of such previous conviction is established in the manner prescribed in paragraph 7 of this subsection.

"(6) A person who, after having been two times convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipecaine, opiate, or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipecaine, or opiate, again sells, imports, or exports or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such third offense, or any offense subsequent thereto, be fined not more than \$10,000 or imprisoned in a Federal penitentiary for not more than twenty years, or both, in the discretion of the court, whenever the fact of such previous convictions is established in the manner prescribed in paragraph 7 of this subsection.

"(7) Whenever it shall appear, after conviction and before or after sentence, that a person convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of the narcotic drugs enumerated in paragraph (5) has previously been convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of said narcotic drugs, in violation of the laws of the United States, it shall be

the duty of the United States district attorney for the district in which such subsequent conviction was had to file an information alleging that the defendant has previously been so convicted, and further alleging the number of such previous convictions. The court in which the defendant was convicted shall cause the said defendant, whether confined in prison or otherwise, to appear before it and shall apprise him of the allegations of the information and of his right to a trial by jury as to the truth thereof. The court shall inquire of the defendant whether he is the person who has previously been convicted. If the defendant states he is not such person, or if he refuses to answer or remains silent, a plea of not guilty shall be entered by the court, and a jury shall be empaneled to determine whether the defendant is the person alleged in the information to have previously been convicted, and the number of such previous convictions. If after a trial on the sole issue of the truth of such allegations the jury determines that the defendant is in fact the person previously convicted as charged in the information, or if he acknowledges in open court, after being duly cautioned as to his rights, that he is such person, he shall be punished as prescribed in paragraphs 5 or 6 of this subsection, as the case may be, and the previous sentence of the court, if any, shall be vacated and there shall be deducted from the new sentence the amount of time actually served under the sentence so vacated."

Saving Clause. Section 6 of Act Nov. 2, 1951 provided that the repeal of subsecs. (b) (5), (b) (6), and (b) (7) of this section should not affect any rights or liabilities "now" existing thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2277. See, also, Act Mar. 8, 1946, 1946 U.S. Code Cong. Service, p. 1083.

§ 2558. Forfeitures

(a) **Unstamped packages.** All unstamped packages of narcotic drugs found in the possession of any person, except as provided in this subchapter, shall be subject to seizure and forfeiture, and all the provisions of internal revenue laws relating to searches, seizures, and forfeiture of unstamped articles shall be extended to and made to apply to the articles taxed under this subchapter and the persons upon whom the taxes under this subchapter or part V of subchapter A of chapter 27 are imposed.

(b) Seized opium—Confiscation and disposal

(1) **Procedure.** All narcotic drugs seized by the United States Government from any person or persons charged with any violation of this chapter or part V of subchapter A of chapter 27, or the Act of February 9, 1909, ch. 100, 35 Stat. 614 as amended by the act of Jan. 17, 1914, ch.

9, 38 Stat. 275, the Act of May 26, 1922 (ch. 202, 42 Stat. 596), the Act of June 7, 1924 (ch. 352, 43 Stat. 657), and the Act of June 14, 1930 (ch. 488, 46 Stat. 586) (U.S.C., Title 21, §§ 171-184), shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States; and the Secretary is authorized to deliver for medical or scientific purposes to any department, bureau, or other agency of the United States Government, upon proper application therefor under such regulation as may be prescribed by the Secretary, any of the drugs so seized, confiscated, and forfeited to the United States. The provisions of this paragraph shall also apply to narcotic drugs seized or coming into the possession¹ of the United States in the enforcement of this chapter, part V of subchapter A of chapter 27, or any of the above mentioned acts where the owner or owners thereof are unknown. No narcotic drugs coming into possession¹ of the United States under the operation of said chapter, part, or acts, or the provisions of this paragraph, shall be destroyed without certification by a committee appointed by the Secretary that they are of no value for medical or scientific purposes.

(2) Cross reference

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(c) Cross reference

For general forfeiture provisions, see part III of subchapter A of chapter 28 and section 3793 of chapter 38.

53 Stat. 276, amended July 1, 1944, c. 377, § 4, 58 Stat. 721; Mar. 8, 1946, c. 81, § 4, 60 Stat. 39; Aug. 8, 1953, c. 394, §§ 3(a), 6, 67 Stat. 505, 506.

¹ So in original. Probably should read "possession."

Historical Note

1953 Amendment. Subsec. (a) amended by Act Aug. 8, 1953, § 6, which substituted "narcotic drugs" for "the drugs mentioned in section 2550(a)".

Subsec. (b) amended by Act Aug. 8, 1953, § 3(a), which substituted "narcotic drugs" for "opium, coca leaves, isonipecaine, opiates, and all salts, derivatives, and preparations of opium, coca leaves, isonipecaine, and opiates", and "No narcotic drugs" for "None of the aforesaid drugs".

Subsec. (b) (1) amended by Act Aug. 8, 1953, § 6, which substituted "narcotic drugs" for "any of the aforesaid drugs". Narcotic drugs—

1946 Amendment. Subsec. (b) amended by Act Mar. 8, 1946, which inserted "opiates," immediately following "All opium, coca leaves, isonipecaine," deleted the word "and" preceding "isonipecaine" from phrase "all salts, derivatives, and * * * isonipecaine", and inserted immediately following such phrase "and opiates,".

1944 Amendment. Subsec. (b) amended by Act July 1, 1944, which struck out "its salts, derivatives, and compounds, and coca leaves, salts, derivatives and compounds thereof," and inserted in lieu thereof "coca leaves, isonipecaine, and all salts, derivatives, and preparations of opium, coca leaves, and isonipecaine," and inserted "the Act of May 26, 1922 (c. 202, 42 Stat. 596), the Act of June 7, 1924 (c. 352, 43 Stat. 657), and the Act of June 14, 1930, (c. 488, 46 Stat. 586)" following "(c. 9, 38 Stat. 275)".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2277. See, also, Act Mar. 8, 1946, 1946 U.S.Code Cong.Service, p. 1083.

§ 2559. Regulations

(a) Making and publishing. The Secretary shall make, prescribe, and publish all needful rules and regulations for carrying the provisions of this subchapter and part V of subchapter A of chapter 27 into effect.

(b) Cross reference

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 277.

§ 2560. Personnel

(a) **Appointment.** The Secretary is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this subchapter and part V of subchapter A of chapter 27.

(b) **Cross reference**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 277.

§ 2561. Laws unaffected

Nothing contained in this subchapter or part V of subchapter A of chapter 27 shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June thirtieth, nineteen hundred and six, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," c. 3915, 34 Stat. 768 (U.S.C., Title 21, §§ 1-15), and any amendment thereof, or of the Act approved February ninth, nineteen hundred and nine, entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," c. 100, 35 Stat. 614 (U.S.C., Title 21, §§ 171-185), and any amendment thereof. 53 Stat. 277.

Historical Note

References in Text. Act of Congress approved June thirtieth, nineteen hundred and six, referred to in the text, which was formerly classified to sections 1-5, 7-15 of Title 21, Food and Drugs, was repealed by Act June 25, 1938, c.

675, § 902(a), 52 Stat. 1059, eff. Jan. 1, 1940. Subject matter similar to said Act June 30, 1906 is now contained in the Federal Food, Drug, and Cosmetic Act, which is classified to chapter 9 of Title 21, Food and Drugs.

§ 2562. Other laws applicable

(a) **General.** All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter and sections 3220, 3221, 3222, and subsection (a) of section 3224 of chapter 27.

(b) **Cross reference**

For provisions making applicable the internal revenue laws relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps, see subsection (b) of section 2552.

53 Stat. 277.

§ 2563. Territorial extent of law

The provisions of this subchapter and part V of subchapter A of chapter 27 shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, the Territory of the Pacific Islands, and the Canal Zone. 53 Stat. 277, amended Aug. 8, 1953, c. 392, § 1, 67 Stat. 500.

Historical Note

1953 Amendment. Act Aug. 8, 1953, c. 392, amended section to make it applicable to the Trust Territory of the Pacific Islands.

Effective Date of 1953 Amendment. Sec. 6 of Act Aug. 8, 1953, c. 392, provided that the amendments to sections 2554(h) (1), 2563, 2564(a), 2565, and 3228(g) of this title shall take effect on the first day of the third month which begins more than ten days after Aug. 8, 1953.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2255.

§ 2564. Administration in Puerto Rico, the Trust Territory of the Pacific Islands, the Canal Zone, and The Virgin Islands

(a) Puerto Rico and the Trust Territory of the Pacific Islands. In Puerto Rico and the Trust Territory of the Pacific Islands, the administration of this subchapter and part V of subchapter A of chapter 27, the collection of the special tax imposed by section 3220 of chapter 27, and the issuance of the order forms specified in section 2554 shall be performed by the appropriate internal revenue officers of those governments, and all revenues collected thereunder in Puerto Rico and the Trust Territory of the Pacific Islands shall accrue intact to the general governments thereof, respectively. The highest court of original jurisdiction of the Trust Territory of the Pacific Islands shall possess and exercise jurisdiction in all cases arising in such Territory under this subchapter and part V of subchapter A of chapter 27.

(b) Canal Zone

The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this subchapter and part V of subchapter A of chapter 27 by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away narcotic drugs.

(c) Virgin Islands

For authority of the President to exempt persons in the Virgin Islands from the order form requirements, see subsection (b) of section 2554.

53 Stat. 277, amended Aug. 8, 1953, c. 392, § 2, 67 Stat. 500; Aug. 8, 1953, c. 394, § 3(b), 67 Stat. 505.

Historical Note

1953 Amendment. Act Aug. 8, 1953, c. 392, § 2(a), amended catchline to reflect applicability of section to the Trust Territory of the Pacific Islands.

Subsec. (a) amended by Act Aug. 8, 1953, c. 392, § 2(b), to make it applicable to the Trust Territory of the Pacific Islands.

Subsec. (b) amended by Act Aug. 8, 1953, c. 394, which substituted "narcotic drugs" for "opium or coca leaves, their salts, derivatives or preparations".

Effective Date of 1953 Amendment. Amendment of section by Act Aug. 8,

1953, c. 392, as effective the first day of the third month which begins more than ten days after Aug. 8, 1953, see note set out under section 2563 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Acts Aug. 8, 1953, cc. 392, 394, see 1953 U.S. Code Cong and Adm. News, pp. 2255, 2277, respectively.

§ 2565. Definitions

For definitions of the following, see the subsections of section 3228 indicated below:

Person.

Subsection (a).

Importer, manufacturer, or producer.

Subsection (b).

Wholesale dealer.

Subsection (c).

Retail dealer.

Subsection (d).

Territory.

Subsection (g).

Narcotic drugs.

Subsection (g).

§ 2565

NARCOTICS

53 Stat. 278, amended July 1, 1944, c. 377, § 5, 58 Stat. 721; March 8, 1946, c. 81, § 5, 60 Stat. 39; Aug. 8, 1953, c. 392, § 4, 67 Stat. 500; Aug. 8, 1953, c. 394, § 4, 67 Stat. 505.

Historical Note

References in Text. Subsec. (g), referred to in the text, under "Narcotic Drugs", is the subsec. added to section 3228 of this title by Act Aug. 8, 1953, c. 394, § 1, 67 Stat. 505. Such subsec. should probably be subsec. (h).

1953 Amendment. Act Aug. 8, 1953, c. 392, amended section by adding cross reference for definition of Territory.

Act Aug. 8, 1953, c. 394, amended section by striking out all that followed "Subsection (d)" and adding cross reference for definition of "Narcotic Drugs".

1946 Amendment. Act Mar. 8, 1946, amended section by adding "Opiate" and "Subsection (f)."

1944 Amendment. Act July 1, 1944, amended section by adding "Isonipe-caine" and "Subsection (e)".

Effective Date of 1953 Amendment. Amendment of section by Act Aug. 8, 1953, c. 392, as effective the first day of the third month which begins more than ten days after Aug. 8, 1953, see note set out under section 2563 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Acts Aug. 8, 1953, cc. 392, 394, see 1953 U.S.Code Cong. and Adm.News, pp. 2255, 2277, respectively. See, also, Mar. 8, 1946, 1946 U.S.Code Cong.Service, p. 1083.

SUBCHAPTER B.—OPIUM FOR SMOKING

§ 2567. Tax

(a) **Rate.** An internal revenue tax of \$300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes.

(b) How paid

(1) **Stamps.** All opium prepared for smoking manufactured in the United States shall be duly stamped in such a permanent manner as to denote the payment of the internal revenue tax thereon.

(2) Assessment

For assessment in case of omitted taxes payable by stamp, see section 3311 of chapter 28 and section 3640 of chapter 35. 53 Stat. 278.

§ 2568. Stamps

The provisions of law covering the engraving, issue, sale, accountability, effacement, cancellation, and the destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (b) of the preceding section. 53 Stat. 278.

§ 2569. Manufacturers

(a) **Definition.** Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium, commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this subchapter.

(b) **Bond.** Every manufacturer of opium suitable for smoking purposes shall file with the collector of the district in which his manufactory is located such bonds as the Secretary may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$100,000; and the sum of said bond may be increased from time to time and

additional sureties required, at the discretion of the collector or under instructions of the Secretary. No person shall engage in such manufacture who has not given the bond required by the Secretary.

(c) **Citizenship.** No person shall engage in the manufacture of opium suitable for smoking purposes who is not a citizen of the United States.

(d) **Other requirements.** Every manufacturer of opium suitable for smoking purposes shall—

(1) **Notices and inventories.** File with the collector of the district in which his manufactory is located such notices and inventories,

(2) **Books and returns.** Keep such books and render such returns of material and products,

(3) **Signs and factory number.** Put up such signs and affix such number to his factory, and

(4) **Conduct of business.** Conduct his business under such surveillance of officers and agents as the Secretary may by regulation require.

(5) **Cross reference**

For authority of the Secretary to delegate such powers and duties, see subchapter D.
53 Stat. 278.

§ 2570. Penalty

A penalty of not less than \$10,000 or imprisonment for not less than five years, or both, in the discretion of the court, shall be imposed for each and every violation of this subchapter relating to opium by any person or persons. 53 Stat. 279.

§ 2571. Forfeiture

All opium prepared for smoking wherever found within the United States without the stamps required by this subchapter shall be forfeited and destroyed. 53 Stat. 279.

SUBCHAPTER C.—MARIHUANA

§ 2590. Tax

(a) **Rate.** There shall be levied, collected, and paid upon all transfers of marihuana which are required by section 2591 to be carried out in pursuance of written order forms taxes at the following rates:

(1) **Transfers to special taxpayers.** Upon each transfer to any person who has paid the special tax and registered under sections 3230 and 3231, \$1 per ounce of marihuana or fraction thereof.

(2) **Transfers to others.** Upon each transfer to any person who has not paid the special tax and registered under sections 3230 and 3231, \$100 per ounce of marihuana or fraction thereof.

(b) **By whom paid.** Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 2591 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

(c) **How paid**

(1) **Stamps.** Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Secretary.

(2) Assessment

For assessment in case of omitted taxes payable by stamp, see section 3311 and section 3640.

(d) Registration and special tax

For requirements as to registration and special tax, see part VI of subchapter A of chapter 27.

53 Stat. 279.

§ 2591. Order forms

(a) General requirement. It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 3230 and 3231, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary.

(b) Exceptions. Subject to such regulations as the Secretary may prescribe, nothing contained in this section shall apply—

(1) Professional practice. To a transfer of marihuana to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such marihuana transferred, showing the amount transferred and the name and address of the patient to whom such marihuana is transferred, and such record shall be kept for a period of two years from the date of the transfer of such marihuana, and subject to inspection as provided in section 2595.

(2) Prescriptions. To a transfer of marihuana, made in good faith by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231: *Provided*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who issues the same: *Provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled so as to be readily accessible for inspection by the officers, agents, employees, and officials mentioned in section 2595.

(3) Exportation. To the sale, exportation, shipment, or delivery of marihuana by any person within the United States, any Territory, the District of Columbia, or any of the insular possessions of the United States, to any person in any foreign country regulating the entry of marihuana, if such sale, shipment, or delivery of marihuana is made in accordance with such regulations for importation into such foreign country as are prescribed by such foreign country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(4) Government and State officials. To a transfer of marihuana to any officer or employee of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, District, county, or municipal or insular hospitals or prisons.

(5) Certain seeds. To a transfer of any seeds of the plant *Cannabis sativa* L. to any person registered under section 3231.

(c) Supply. The Secretary shall cause suitable forms to be prepared for the purposes before mentioned and shall cause them to be distributed to collectors for sale. The price at which such forms shall be sold by said collectors shall be fixed by the Secretary, but shall not exceed 2 cents each. Whenever any collector shall sell any of such forms he shall cause the

date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

(d) **Preservation.** Each such order form sold by a collector shall be prepared by him and shall include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given by the collector to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of two years so as to be readily accessible for inspection by any officer, agent, or employee mentioned in section 2595. The copy given to the purchaser by the collector shall be retained by the purchaser and preserved for a period of two years so as to be readily accessible to inspection by any officer, agent, or employee mentioned in section 2595. The second copy shall be preserved in the records of the collector.

(e) **Exemption for Certain Transfers to Millers.** Nothing in this section shall apply to a transfer of the plant *Cannabis sativa* L. or any parts thereof from any person registered under section 3231 to a person who is also registered under section 3231 as a taxpayer required to pay the tax imposed by section 3230(a) (6). 53 Stat. 280, amended Mar. 8, 1946, c. 81, § 10(a), 60 Stat. 40.

Historical Note

1946 Amendment. Subsec. (e) added by Act Mar. 8, 1946.

volumes "Title 26—Internal Revenue Acts".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see

Congressional Comment: For legislative history and purpose of Act Mar. 8, 1946, see 1946 U.S. Code Cong. Service, p. 1083.

§ 2592. Stamps

(a) **Affixing.** The stamps provided in section 2590(c) (1) shall be affixed by the collector or his representative to the original order form.

(b) **Other laws applicable.** All provisions of law relating to the engraving, issuance, sale, accountability, cancelation, and destruction of tax-paid stamps provided for in the internal-revenue laws shall, insofar as applicable and not inconsistent with this subchapter, be extended and made to apply to stamps provided for in section 2590(c) (1).

(c) **Cross reference**

For general provisions relating to stamps, see part I of subchapter A of chapter 28.

53 Stat. 281.

§ 2593. Unlawful possession

(a) **Persons in general.** It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 2590(a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the collector, to produce the order form required by section 2591 to be retained by him, shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 2590(a).

(b) **Government and State officials.** No liability shall be imposed by virtue of this section upon any duly authorized officer of the Treasury Department engaged in the enforcement of this subchapter and part VI of subchapter A of chapter 27 or upon any duly authorized officer of any State, or Territory, or of any political subdivision thereof, or the District.

of Columbia, or of any insular possession of the United States, who shall be engaged in the enforcement of any law or municipal ordinance dealing with the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. 53 Stat. 281.

§ 2594. Records, statements and returns

(a) **General requirement.** Every person liable to any tax imposed by this subchapter or part VI of subchapter A of chapter 27 shall keep such books and records, render under oath such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

(b) **Return by registrants of marihuana**

For returns by registrants of marihuana, see section 3233(a) of chapter 27. 53 Stat. 281.

§ 2595. Inspection of returns, order forms and prescriptions

The order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 2591, and the statements or returns filed in the office of the collector of the district under the provisions of section 3233 shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose, and such officers of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States as shall be charged with the enforcement of any law or municipal ordinance regulating the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. Each collector shall be authorized to furnish, upon written request, copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory, or political subdivision thereof, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested. 53 Stat. 281.

§ 2596. Penalties

For penalties for violating or failing to comply with any of the provisions of this subchapter, see section 2557(b) (1). 53 Stat. 282, amended Nov. 2, 1951, c. 666, § 3, 65 Stat. 768.

Historical Note

1951 Amendment. Act Nov. 2, 1951, amended section by substituting, for the penalties for violating this subchapter or part VI of subchapter A of chapter 27 of this title, the penalties, for violating or failing to comply with this subchapter, contained in section 2557(b) (1) of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2597. Burden of proof

It shall not be necessary to negative any exemptions set forth in this subchapter or part VI of subchapter A of chapter 27 in any complaint, information, indictment, or other writ or proceeding laid or brought under this subchapter or part VI of subchapter A of chapter 27 and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 3231 relating to registration or that he has complied with the provisions of section 2591 relating to order forms, he shall be presumed not to have complied with such provisions of such sections, as the case may be. 53 Stat. 282.

§ 2598. Forfeitures

(a) **Unlawful importation, manufacture, or transfer.** Any marihuana which has been imported, manufactured, compounded, transferred, or produced in violation of any of the provisions of this subchapter or part VI of subchapter A of chapter 27 shall be subject to seizure and forfeiture and, except as inconsistent with the provisions of such subchapter and part, all the provisions of internal-revenue laws relating to searches, seizures, and forfeitures are extended to include marihuana.

(b) **Ownership by violators.** Any marihuana which may be seized by the United States Government from any person or persons charged with any violation of this subchapter or part VI of subchapter A of chapter 27 shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States.

(c) **Unknown ownership.** Any marihuana seized or coming into the possession of the United States in the enforcement of this subchapter or part VI of subchapter A of chapter 27, the owner or owners of which are unknown, shall be confiscated by and forfeited to the United States.

(d) **Disposal.** The Secretary is hereby directed to destroy any marihuana confiscated by and forfeited to the United States under this section or to deliver such marihuana to any department, bureau, or other agency of the United States Government, upon proper application therefor under such regulations as may be prescribed by the Secretary. 53 Stat. 282.

§ 2599. Regulations

The Secretary is authorized to make, prescribe, and publish all necessary rules and regulations for carrying out the provisions of this subchapter and part VI of subchapter A of chapter 27. 53 Stat. 282.

§ 2600. Delegation of powers

The Secretary is authorized to confer or impose any of the rights, privileges, powers, and duties conferred or imposed upon him by this subchapter or part VI of subchapter A of chapter 27 upon such officers or employees of the Treasury Department as he shall designate or appoint. 53 Stat. 282.

§ 2601. Other laws applicable

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2550 of this chapter and section 3220 of chapter 27, shall, insofar as not inconsistent with this subchapter and part VI of subchapter A of chapter 27, be applicable in respect of the taxes imposed by such subchapter and part. 53 Stat. 283.

§ 2602. Territorial extent of law

The provisions of this subchapter and part VI of subchapter A of chapter 27 shall apply to the several States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, and the insular possessions of the United States, except the Philippine Islands. 53 Stat. 283.

§ 2603. Administration in insular possessions

(a) **Puerto Rico.** In Puerto Rico the administration of this subchapter and part VI of subchapter A of chapter 27, the collection of the special taxes and transfer taxes, and the issuance of the order forms provided for in section 2591 shall be performed by the appropriate internal-revenue officers of that government, and all revenues collected under this subchapter and part VI of subchapter A of chapter 27 in Puerto Rico shall accrue intact to the general government thereof.

(b) **Virgin Islands.** The President shall be authorized and directed to issue such Executive orders as will carry into effect in the Virgin Islands the intent and purpose of this subchapter and part VI of subchapter A of chapter 27 by providing for the registration with appropriate officers and the imposition of the special and transfer taxes upon all persons in the Virgin Islands who import, manufacture, produce, compound, sell, deal in, dispense, prescribe, administer, or give away marihuana. 53 Stat. 283.

Historical Note

Virgin Islands. By Ex.Ord.No.7715 the President promulgated on Sept. 26, 1937, rules for effectuating the purposes of Act August 2, 1937, c. 553, 50 Stat. 551, from which this subchapter was derived, in the Virgin Islands. 2 F.R. 2347DI, 2008BV.

Delegation of Functions. For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex.Ord.No.10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 5, The President.

§ 2604. Definitions

For definitions of the following, see the subsections of section 3238 indicated below:

Person

Subsection (a).

Marihuana

Subsection (b).

Producer

Subsection (c).

Transfer or transferred

Subsection (d).

53 Stat. 283.

SUBCHAPTER D.—DELEGATION OF POWERS AND DUTIES BY THE SECRETARY

§ 2606. Authorization

The Secretary is authorized to confer or impose any of the rights, privileges, powers, and duties in respect of narcotic drugs conferred upon him by subchapters A and B of this chapter and part V of subchapter A of chapter 27 upon the Commissioner of Narcotics, or any officer or employee of the Bureau of Narcotics, and to confer or impose upon the Commissioner of Internal Revenue, or any of the officers or employees of the Bureau of Internal Revenue, any of such rights, privileges, powers, and duties which, in the opinion of the Secretary, may be necessary in connection with internal revenue taxes. 53 Stat. 283.

CHAPTER 24.—WHITE PHOSPHORUS MATCHES

Sec.

- 2650. White phosphorus defined.
- 2651. Tax.
- 2652. Stamps.
- 2653. Requirements on manufacturers.
- 2654. Importation.
- 2655. Exportation.
- 2656. Penalties.
- 2657. Forfeitures.
- 2658. Recovery of penalties and forfeitures.
- 2659. Other laws applicable.
- 2660. Regulations.

§ 2650. White phosphorus defined

For the purposes of this chapter the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus. 53 Stat. 284.

§ 2651. Tax

(a) **Rate.** Upon white phosphorus matches manufactured, sold, or removed there shall be levied and collected a tax at the rate of 2 cents per one hundred matches.

(b) **By whom paid.** The tax imposed by subsection (a) shall be paid by the manufacturer.

(c) How paid

(1) **Stamps.** The tax imposed by subsection (a) shall be represented by adhesive stamps.

(2) **Assessment.** Whenever any manufacturer of white phosphorus matches sells or removes any such matches without the use of the stamps required by this chapter, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector, who shall collect the same according to law. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. 53 Stat. 284.

§ 2652. Stamps

(a) **Prepared by Commissioner.** The Commissioner shall cause to be prepared suitable and special stamps for payment of the tax on white phosphorus matches provided for by this chapter.

(b) **Furnished by collector.** Such stamps shall be furnished to collectors, who shall sell the same only to duly qualified manufacturers.

(c) **Account kept by collector.** Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer.

(d) **Other laws applicable.** For provision making other laws relating to stamps apply to the stamps provided by this section, see section 2659. 53 Stat. 284.

§ 2653. Requirements on manufacturers

(a) Packing

(1) **Number in packages.** All white phosphorus matches shall be packed by the manufacturer thereof in packages containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches each, which shall then be packed by the manufacturer in packages containing not less than fourteen thousand four hundred matches.

(2) **Stamping.** The manufacturer shall affix to every package containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches an adhesive stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used.

(3) **Factory number.** Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Commissioner shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under subsection (c).

(4) **Label.** Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "NOTICE.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases."

(b) **Books and returns.** Every manufacturer of white phosphorus matches shall file with the collector of the district in which his manufactory is located such notices and inventories, keep such books and render such returns in relation to the business, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(c) **Factory number and signs.** Every manufacturer of white phosphorus matches shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(d) **Bonds.** Every manufacturer of white phosphorus matches shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may, by regulation, require. The bond required of such manufacturer shall be with sureties satisfactory to the collector and in the penal sum of not less than \$1,000; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner.

(e) **Registration.** Every manufacturer of white phosphorus matches shall register with the collector of the district his name or style, place of manufactory, and the place where such business is to be carried on. 53 Stat. 285.

§ 2654. Importation

White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary that they are not white phosphorus matches. The Secretary is authorized and directed

to prescribe such regulations as may be necessary for the enforcement of the provisions of this section. 53 Stat. 285.

§ 2655. Exportation

It shall be unlawful to export from the United States any white phosphorus matches. The Secretary shall have power to issue such regulations to customs officers as are necessary to the enforcement of this section. 53 Stat. 286.

§ 2656. Penalties

(a) **Concealment.** Every manufacturer of matches who, to evade the tax chargeable thereon or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, shall for each offense be fined not more than \$1,000 and be imprisoned not more than two years, or both.

(b) **Selling unstamped matches.** Every manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by this chapter, effectually canceled as provided by subsection (a) (2) of section 2653, shall for each offense be fined not more than \$1,000 and be imprisoned not more than two years.

(c) **Failure to cancel stamps.** Every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by section 2651(a) without effectually canceling such stamp as provided in section 2653(a) (2) shall forfeit the sum of \$50 for every stamp in respect to which such offense is committed.

(d) **Use of insufficient stamps.** Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall for each offense be fined not more than \$1,000 or be imprisoned not more than two years, or both.

(e) **Reusing stamps.** Every person who removes, defaces, or causes or permits or suffers the removal or defacement of any such stamp, or who uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this chapter, shall for every such package in respect to which any such offense is committed be fined \$50.

(f) **Fraud.** Every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this chapter, or any part thereof, shall be fined not more than \$5,000 or be imprisoned not more than three years, or both.

(g) **Failure to register.** Every manufacturer of white phosphorus matches who fails to register as provided and required in subsection (e) of section 2653 shall be subject to a penalty of not more than \$500.

(h) **Omission of factory number from packages.** Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 2653(c) on every package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than \$50 for each package in respect of which such offense is committed.

(i) **Omission of label from packages.** Every manufacturer of white phosphorus matches who neglects to affix the label required by section 2653(a) (4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such

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WHITE PHOSPHORUS MATCHES

original package, shall be fined not more than \$50 for each package in respect of which such offense is committed.

(j) **Exportation of matches.** Any person guilty of violation of section 2655 shall be fined not less than \$1,000 and not more than \$5,000.

(k) **Offenses not specifically covered.** If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other provision of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined \$1,000 for each offense.

(l) Counterfeiting and similar offenses

For counterfeiting and similar offenses, see section 2659(a).

53 Stat. 286.

§ 2657. Forfeitures

(a) **Concealment.** If any manufacturer of matches, to evade the tax chargeable thereon or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, all such matches shall be forfeited.

(b) **Removal or defacement of stamps.** If any person removes, defaces, or causes or permits or suffers the removal or defacement of any stamp affixed to any package of white phosphorus matches, or uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this chapter, all such matches shall be forfeited.

(c) **Unstamped matches.** All packages of white phosphorus matches subject to tax under this chapter that shall be found without stamps as herein provided shall be forfeited to the United States.

(d) **Matches exported.** Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary, who shall have power to issue such regulations to customs officers as are necessary to the enforcement of this subsection.

(e) **Fraud.** Every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this chapter, or any part thereof, shall forfeit the factory and manufacturing apparatus used by him and all the white phosphorus matches and all raw material for the production of white phosphorus matches found in the factory and on the factory premises, or owned by him.

(f) **Offenses not specifically covered.** If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other provision of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, all the white phosphorus matches owned by him or in which he has any interest as owner shall be forfeited to the United States. 53 Stat. 287.

§ 2658. Recovery of penalties and forfeitures

All fines, penalties, and forfeitures imposed by this chapter may be recovered in any court of competent jurisdiction. 53 Stat. 287.

§ 2659. Other laws applicable

(a) All the provisions and penalties of law governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenue shall apply to stamps provided for by this chapter.

(b) All provisions and penalties of law relating to internal revenue so far as applicable, shall extend to and include and apply to the taxes imposed by this chapter and to the articles upon which and to the persons upon whom they are imposed. 53 Stat. 287.

§ 2660. Regulations

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of this chapter, see section 3791(a) (1).

53 Stat. 287.

CHAPTER 25.—FIREARMS

SUBCHAPTER A.—PISTOLS AND REVOLVERS

Sec.

- 2700. Tax.
- 2701. Returns.
- 2702. Payment of tax.
- 2703. Erroneous payments.
- 2704. Computation of tax in special cases.
- 2705. Exportation.
- 2706. Addition to tax in case of nonpayment.
- 2707. Penalties.
- 2708. Discretionary method allowed Commissioner for collecting tax.
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- 2711. Other laws applicable.
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SUBCHAPTER B.—MACHINE GUNS AND SHORT-BARRELLED FIREARMS

- 2720. Tax.
- 2721. Exemptions.
- 2722. Stamps.
- 2723. Order forms.
- 2724. Books, records, and returns.
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- 2726. Unlawful acts.
- 2727. Exportation.
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- 2729. Penalties.
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- 2731. Other laws applicable.
- 2732. Regulations.
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- 2734. Tax on making firearms.

SUBCHAPTER A.—PISTOLS AND REVOLVERS

§ 2700. Tax

(a) Rate. There shall be levied, assessed, collected, and paid upon pistols and revolvers sold or leased by the manufacturer, producer, or

importer, a tax equivalent to 10 per centum of the price for which so sold or leased.

(b) Exemptions.

(1) Sales for use of states, etc. Pistols and revolvers sold for the use of any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, shall be exempt from the tax imposed by subsection (a).

(2) Taxable under subchapter B. The tax imposed by subsection (a) shall not apply to any firearm on which the tax provided by section 2720 of this chapter has been paid.

(3) Cross reference

For exemption from tax in case of exportation, see section 2705.

(c) Computation in special cases. For computation of tax in case of retail sales by wholesalers and in case of colorable sales, see section 2704. 53 Stat. 288, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (9), 55 Stat. 707; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (2), 58 Stat. 64; Mar. 31, 1954, c. 126, Title V, § 502, 68 Stat. 42.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which substituted "10 per centum" for "11 per centum".

1944 Amendment. Subsec. (b) (1) amended by Act Feb. 25, 1944, which changed "the United States, any State, Territory, or possession of the United States," to read "any State, Territory of the United States".

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which substituted "11 per centum" for "10 per centum".

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of this title.

Effective Date of 1944 Amendment. Amendment of subsec. (b) (1) by Act Feb. 25, 1944 was made applicable by section 307(b) (2) thereof which provided: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(2) The amendments of sections 2700(b) (1), 3407, and 3442(3) (insofar as such section relates to the articles enumerated in section 3404) of the Internal Revenue Code, shall be applicable to sales made on or after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war. Such amendments shall not apply to deny an exemption otherwise applicable with respect to any article sold pursuant to a contract entered into prior to the effective date of the amendments, or to any agreement or change order supplemental to such contract bearing the same Government contract number.'"

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Termination of Hostilities. The termination of hostilities of World War II, for the purpose of determining the application of subsec. (b) (1) of this section, as amended by Act Feb. 25, 1944, was proclaimed at 12 o'clock noon of December 31, 1946, by Proc.No.2714, 12 F.R. 1, set out as note under section 601 of Appendix to Title 50, War and National Defense.

Definition. Subsec. (b) (6) of Act Feb. 25, 1944, § 307, provided: "(6) For the purposes of this subsection the term 'date of the termination of hostilities in the present war' means the date proclaimed by the President as the date of such termination, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier."

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 303, 59 Stat. 576, provided: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1930 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm. News, p. 2055.

§ 2701. Returns

Every person liable for the tax imposed by section 2700 (a) shall make monthly returns under oath in duplicate to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. 53 Stat. 289.

§ 2702. Payment of tax

(a) **Date of payment.** The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed in section 2701 for filing the return.

(b) **Discretionary method of collection**

For discretionary method of collection, see section 2703.
53 Stat. 289.

§ 2703. Erroneous payments

(a) **In general.** In the case of any overpayment or overcollection of the tax imposed by section 2700, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

(b) **Exports**

For refund of tax on pistols and revolvers exported, see section 2705.
53 Stat. 289.

§ 2704. Computation of tax in special cases

(a) **Retail sales by wholesalers.** If any manufacturer, producer, or importer of pistols or revolvers customarily sells such articles both at wholesale and at retail, the tax in the case of any articles sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.

(b) **Colorable sales and leases**

(1) **To affiliated corporations.** If any corporation, which manufactures, produces, or imports, pistols or revolvers, sells or leases such articles to a corporation affiliated with it within the meaning of this paragraph, at less than the fair market price obtainable therefor, the tax thereon shall be computed on the basis of the price at which such articles are sold or leased by the corporation with which it is affiliated. For the purpose of this paragraph, two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the stock of the other or others, or (2) if at least 95 per centum of the stock of two or more corporations is owned by the same interests. As used in this paragraph, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(2) **To others.** If any person who manufactures, produces, or imports pistols or revolvers, sells or leases such articles whether through any agreement, arrangement, or understanding, or otherwise, at less than the fair market price obtainable therefor, either (1) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (2) with intent to cause such benefit, the amount for which such articles are sold or leased shall be taken to be the amount which would have been received from the sale or lease of such articles if sold or leased at the fair market price.
53 Stat. 289.

§ 2705. Exportation

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the tax imposed under section 2700 (a) shall not apply in respect of articles sold or leased for export or for shipment to a possession of the United States and in due course so exported or shipped. Under such rules and regulations the amount of any internal revenue tax erroneously or illegally collected in respect of such articles so exported or shipped may be refunded to the exporter or shipper of the articles, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded. 53 Stat. 289.

§ 2706. Addition to tax in case of nonpayment

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. 53 Stat. 290.

§ 2707. Penalties

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax imposed by section 2700 (a), or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. 53 Stat. 290.

§ 2708. Discretionary method allowed Commissioner for collecting tax

Whether or not the method of collecting the tax imposed by section 2700 (a) is specifically provided in this subchapter, such tax may, under regulations prescribed by the Commissioner, with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, insofar

as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. 53 Stat. 290.

§ 2709. Records, statements, and returns

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe. 53 Stat. 290.

§ 2710. Rules and regulations

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791(a) (1).

53 Stat. 291.

§ 2711. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter. 53 Stat. 291.

§ 2712. Effective date of subchapter

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 291.

§ 2713. Cross references

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see chapters 28 and 34 to 37, inclusive.

53 Stat. 291.

SUBCHAPTER B.—MACHINE GUNS AND SHORT-BARRELLED FIREARMS

§ 2720. Tax

(a) **Rate.** There shall be levied, collected, and paid upon firearms transferred in the United States a tax at the rate of \$200 for each firearm: *Provided*, That the transfer tax on any gun with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or any gun designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, shall be at the rate of \$1. The tax imposed by this section shall be in addition to any import duty imposed on such firearm.

(b) **By whom paid.** Such tax shall be paid by the transferor.

(c) **How paid**

(1) **Stamps.** Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Commissioner, with the approval of the Secretary.

(2) **Cross reference**

For assessment in case of omitted taxes payable by stamp, see sections 3311 and 3640.

(d) **Registration and special tax**

For requirements as to registration and special tax, see part VIII of subchapter A of chapter 27.

53 Stat. 291, amended Aug. 11, 1945, c. 364, § 1, 59 Stat. 531; May 21, 1952, c. 320, § 2(a), 66 Stat. 87.

Historical Note

1952 Amendment. Subsec. (a) amended by Act May 21, 1952, which substituted "United States" for "continental United States".

1945 Amendment. Subsec. (a) amended by Act Aug. 11, 1945, which inserted ", or any gun designed * * * without manual reloading,".

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Effective Date of 1945 Amendment. Subsec. (a) of section 3 of Act Aug. 11, 1945, provided: "The amendment made by the first section of this Act [subsec. (a) of this section] shall apply with respect to any transfer within the scope thereof made on or after July 1, 1945."

Exemption From Criminal Liability. Section 4(c) of Act May 21, 1952, provided that: "Nothing in subchapter B of chapter 25 of the Internal Revenue Code [this

subchapter] or of part VIII of subchapter A of chapter 27 of the Internal Revenue Code [part VIII of subchapter A of chapter 27 of this title], as amended by this Act [Act May 21, 1952], shall impose any liability (whether criminal or otherwise) in respect of any act or failure to act occurring before the effective date specified in subsection (a), unless such liability would have existed in respect of such act or failure to act under the provisions of such subchapter B [this subchapter] and part VIII [part VIII of subchapter A of chapter 27 of this title] as they existed on the day prior to the effective date specified in subsection (a) [see note set out under this section]."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 1454

§ 2721. Exemptions

(a) **Transfers exempt.** This subchapter and Part VIII of subchapter A of chapter 27 shall not apply to the transfer of firearms (1) to the United States Government, any State, Territory, or possession of the United States, or to any political subdivision thereof, or to the District of Columbia; (2) to any peace officer or any Federal officer designated by regulations of the Commissioner; (3) to the transfer of any firearm which is unserviceable and which is transferred as a curiosity or ornament.

(b) **Notice of exemption.** If the transfer of a firearm is exempted as provided in subsection (a), the person transferring such firearm shall notify the Commissioner of the name and address of the applicant, the number or other mark identifying such firearm, and the date of its transfer, and shall file with the Commissioner such documents in proof thereof as the Commissioner may by regulations prescribe.

(c) Other taxes

For exemption from the tax on pistols and revolvers, see section 2700(b) (2), and for exemption from the manufacturer's sales tax on firearms, see section 3407 of chapter 29.

53 Stat. 291.

§ 2722. Stamps

(a) **Affixing.** The stamps provided for in section 2720(c) (1) shall be affixed to the order for such firearm, hereinafter provided for.

(b) Other laws applicable

For provisions relating to the engraving, issuance, sale, accountability, cancellation, and distribution of tax-paid stamps, see section 2731.

53 Stat. 292.

§ 2723. Order forms

(a) **General requirements.** It shall be unlawful for any person to transfer a firearm except in pursuance of a written order from the person seeking to obtain such article, on an application form issued in blank in duplicate for that purpose by the Commissioner. Such order shall identify the applicant by such means of identification as may be pre-

scribed by regulations under this subchapter and Part VIII of subchapter A of chapter 27: *Provided*, That, if the applicant is an individual, such identification shall include fingerprints and a photograph thereof.

(b) **Contents of order form.** Every person so transferring a firearm shall set forth in each copy of such order the manufacturer's number or other mark identifying such firearm, and shall forward a copy of such order to the Commissioner. The original thereof with stamps affixed, shall be returned to the applicant.

(c) **Documents to accompany transfers.** No person shall transfer a firearm unless such person, in addition to complying with subsection (b), transfers therewith (in compliance with such regulations as may be prescribed under this subchapter for proof of payment of all taxes on such firearm)—

(1) for each prior transfer of such firearm which was subject to the tax imposed by section 2720 (a), the stamp-affixed order provided in this section, and

(2) for any making of such firearm which was subject to the tax imposed by section 2734 (a), the stamp-affixed declaration provided in section 2734.

(d) **Exemption in case of registered importers, manufacturers, and dealers.** Importers, manufacturers, and dealers who have registered and paid the tax as provided for in Part VIII of subchapter A of chapter 27 shall not be required to conform to the provisions of this section with respect to transactions in firearms with dealers or manufacturers if such dealers or manufacturers have registered and have paid such tax, but shall keep such records and make such reports regarding such transactions as may be prescribed by regulations under this subchapter and Part VIII of subchapter A of chapter 27.

(e) **Supply.** The Commissioner, with the approval of the Secretary, shall cause suitable forms to be prepared for the purposes of subsection (a), and shall cause the same to be distributed to collectors of internal revenue. 53 Stat. 292, amended May 21, 1952, c. 320, § 3(a), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (c) amended by Act May 21, 1952, which made technical changes to make section conform to new section 2734 of this title.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1454.

§ 2724. Books, records, and returns

Importers, manufacturers, and dealers shall keep such books and records and render such returns in relation to the transactions in firearms specified in this subchapter and Part VIII of subchapter A of chapter 27 as the Commissioner, with the approval of the Secretary, may by regulations require. 53 Stat. 292.

§ 2725. Identification of firearms

Each manufacturer and importer of a firearm shall identify it with a number or other identification mark approved by the Commissioner, such number or mark to be stamped or otherwise placed thereon in a manner approved by the Commissioner. 53 Stat. 292.

§ 2726. Unlawful acts

(a) Possessing firearms unlawfully transferred or made. It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of section 2720, 2721(b), 2722, 2723, 2727, or 2731 of this subchapter, or which has at any time been made in violation of section 2734 of this subchapter.

(b) Removing or changing identification marks. It shall be unlawful for anyone to obliterate, remove, change, or alter the number or other identification mark required by section 2725. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any firearm upon which such number or mark shall have been obliterated, removed, changed, or altered, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such possession to the satisfaction of the jury.

(c) Importing firearms illegally. It shall be unlawful (1) fraudulently or knowingly to import or bring any firearm into the United States or any territory under its control or jurisdiction (including the Philippine Islands), in violation of the provisions of this subchapter and Part VIII of subchapter A of chapter 27; or (2) knowingly to assist in so doing; or (3) to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of any such firearm after being imported or brought in, knowing the same to have been imported or brought in contrary to law. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of such firearm, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains such possession to the satisfaction of the jury. 53 Stat. 292, amended May 21, 1952, c. 320, § 3(b), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (a) amended by Act May 21, 1952, which made technical changes to make section conform to new section 2734 of this title.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Philippine Independence. Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, issued pursuant to section 1394 of Title 22, Foreign Relations and Inter-

course, recognized the independence of the Philippines as of July 4, 1946. For text of Proc. No. 2695, see note under section 1394 of said Title 22.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1454.

§ 2727. Exportation

Under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, and upon proof of the exportation of any firearm to any foreign country (whether exported as part of another article or not) with respect to which the transfer tax under section 2720 has been paid by the manufacturer, the Commissioner shall refund to the manufacturer the amount of the tax so paid, or, if the manufacturer waives all claim for the amount to be refunded, the refund shall be made to the exporter. 53 Stat. 293.

§ 2728. Importation

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction (including the Philippine Islands), except that, under regulations prescribed by the Secretary, any firearm may be so imported or brought in when (1) the purpose thereof is shown to be lawful and (2) such firearm is unique or of a type which

cannot be obtained within the United States or such territory. 53 Stat. 293.

Historical Note

Philippine Independence. See note set out under section 2726 of this title.

§ 2729. Penalties

Any person who violates or fails to comply with any of the requirements of this subchapter and Part VIII of subchapter A of chapter 27 shall, upon conviction, be fined not more than \$2,000 or be imprisoned for not more than five years, or both, in the discretion of the court. 53 Stat. 293.

§ 2730. Forfeitures

(a) **Laws applicable.** Any firearm which has at any time been transferred or made in violation of the provisions of this subchapter and Part VIII of subchapter A of chapter 27 shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal-revenue laws relating to searches, seizures, and forfeiture of unstamped articles are extended to and made to apply to the articles taxed under this subchapter, and the persons to whom this subchapter and Part VIII of subchapter A of chapter 27 applies.

(b) **Disposal.** In the case of the forfeiture of any firearm by reason of a violation of this subchapter and Part VIII of subchapter A of chapter 27: No notice of public sale shall be required; no such firearm shall be sold at public sale; if such firearm is in the possession of any officer of the United States except the Secretary, such officer shall deliver the firearm to the Secretary; and the Secretary may order such firearm destroyed or may sell such firearm to any State, Territory, or possession (including the Philippine Islands), or political subdivision thereof, or the District of Columbia, or retain it for the use of the Treasury Department or transfer it without charge to any Executive department or independent establishment of the Government for use by it. 53 Stat. 293, amended May 21, 1952, c. 320, § 3(c), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (a) amended by Act May 21, 1952, which made technical changes to make section conform to new section 2734 of this title.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Philippine Independence. See note set out under section 2726 of this title.

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1454.

§ 2731. Other laws applicable

All provisions of law (including those relating to special taxes, to the assessments, collection, remission, and refund of internal revenue taxes, to the engraving, issuance, sale, accountability, cancellation, and distribution of tax-paid stamps provided for in the internal-revenue laws, and to penalties) applicable with respect to the taxes imposed by sections 2550 of subchapter A of chapter 23 and 3220 of subchapter A of chapter 27, and all other provisions of the internal-revenue laws shall, insofar as not inconsistent with the provisions of this subchapter and Part VIII of subchapter A of chapter 27, be applicable with respect to the taxes imposed by sections 2720(a) and 2734(a) of subchapter B of this chapter and section 3260 of subchapter A of chapter 27. 53 Stat. 294, amended May 21, 1952, c. 320, § 3(d), 66 Stat. 88.

Historical Note

1952 Amendment. Act May 21, 1952, amended section to make technical changes to make it conform to new section 2734 of this title.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S.Code Cong. and Adm.News. p. 1454.

§ 2732. Regulations

The Commissioner, with the approval of the Secretary, shall prescribe such rules and regulations as may be necessary for carrying the provisions of this subchapter and Part VIII of subchapter A of chapter 27 into effect. 53 Stat. 294.

§ 2733. Definitions.

That for the purposes of this subchapter and Part VIII of subchapter A of chapter 27—

(a) **Firearm.** The term "firearm" means a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition, but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is sixteen inches or more in length.

(b) **Machine gun.** The term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

(c) **Repealed.** May 21, 1952, c. 320, § 2(b), 66 Stat. 88.

(d) **Importer.** The term "importer" means any person who imports or brings firearms into the United States for sale.

(e) **Manufacturer.** The term "manufacturer" means any person who is engaged within the United States in the manufacture of firearms, or who otherwise produces therein any firearm for sale or disposition.

(f) **Dealer.** The term "dealer" means any person not a manufacturer or importer engaged within the United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawnbrokers, and dealers in used firearms.

(g) **Interstate commerce.** The term "interstate commerce" means transportation from any State or Territory or District, or any insular possession of the United States (including the Philippine Islands), to any other State or to the District of Columbia.

(h) **To transfer or transferred.** The term "to transfer" or "transferred" shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

(i) **Person.** The term "person" includes a partnership, company, association, or corporation, as well as a natural person. 53 Stat. 294, amended May 21, 1952, c. 320, § 2(b), (c), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (c) repealed by Act May 21, 1952, § 2(b). Prior to such repeal, such subsec. provided: "(c) **Continental United States.** The term 'continental United States' means the States of the United States and the District of Columbia."

Subsecs. (d)-(f) amended by Act May 21, 1952, § 2(c), which substituted "United States" for "continental United States" wherever appearing.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day

of the fourth month following the month [May] of its enactment.

Philippine Independence. See note set out under section 2726 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1454.

§ 2734. Tax on making firearms

(a) **Rate.** There shall be levied, collected, and paid upon the making in the United States of any firearm (whether by manufacture, putting together, alteration, any combination thereof, or otherwise) a tax at that rate provided in section 2720(a) which would apply to any transfer of the firearm so made.

(b) **Exceptions.** The tax imposed by subsection (a) shall not apply to the making of a firearm—

(1) by any person who is engaged within the United States in the business of manufacturing firearms;

(2) from another firearm with respect to which a tax has been paid, prior to such making, under either section 2720(a) or under subsection (a) of this section; or

(3) for the use of (A) the United States Government, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, or (B) any peace officer or any Federal officer designated by regulations of the Secretary.

Any person who makes a firearm in respect of which the tax imposed by subsection (a) does not apply by reason of the preceding sentence shall make such report in respect thereof as the Secretary may by regulations prescribe.

(c) **By whom paid; when paid.** The tax imposed by subsection (a) shall be paid by the person making the firearm. Such tax shall be paid in advance of the making of the firearm.

(d) **How paid.** Payment of the tax imposed by subsection (a) shall be represented by appropriate stamps to be provided by the Secretary.

(e) **Declaration.** It shall be unlawful for any person subject to the tax imposed by subsection (a) to make a firearm unless, prior to such making, he has declared in writing his intention to make a firearm, has affixed the stamp described in subsection (d) to the original of such declaration, and has filed such original and a copy thereof. The declaration required by the preceding sentence shall be filed at such place, and shall be in such form and contain such information, as the Secretary may by regulations prescribe. The original of the declaration, with the stamp affixed, shall be returned to the person making the declaration. If the person making the declaration is an individual, there shall be included as part of the declaration the fingerprints and a photograph of such individual. Added May 21, 1952, c. 320, § 1, 66 Stat. 87.

Historical Note

Effective Date. Section 4(a) of Act May 21, 1952, provided that this section should become effective on the first day

of the fourth month following the month [May] of its enactment.

CHAPTER 26.—LIQUOR

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SUBCHAPTER A.—DISTILLED SPIRITS

PART I—PROVISIONS RELATING TO TAX

§ 2800. Tax

(a) Rate

(1) Distilled spirits generally. There shall be levied and collected on all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of \$10.50 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn from bond. On and after April 1, 1955, the rate of tax imposed by this paragraph shall be \$9 in lieu of \$10.50.

(A) Payment of tax as to domestic spirits. The tax on distilled spirits produced in the United States, to be paid upon withdrawal from bond, and the tax on rectified spirits produced in the United States, shall be paid by stamp, under such rules and regulations, permits, bonds, records, and returns, and with the use of such tax-stamp machines or other devices and apparatus, including but not limited to storage, gaging, and bottling tanks and pipe lines, as the Commissioner with the approval of the Secretary shall prescribe.

(B) Penalties. Whoever manufactures, procures, possesses, uses, or tampers with a tax-stamp machine which may be required under this section with intent to evade the internal-revenue tax imposed upon distilled spirits and rectified spirits, and whoever, with intent to defraud, makes, alters, stimulates, or counterfeits any stamp of the character imprinted by such stamp machines, or who procures, possesses, uses, or sells any forged, altered, counterfeited, or simulated tax stamp, or any plate, die, or device intended for use in forging, altering, counterfeiting, or simulating any such stamps, or who otherwise violates the provisions of this section, or the regulations issued pursuant thereto, shall pay a penalty of \$5,000 and shall be fined not more than \$10,000 or be imprisoned not more than five years, or both, and any machine, device, equipment, or materials used in violation of this section shall be forfeited to the United States and after condemnation shall be destroyed. But this provision shall not exclude any other penalty or forfeiture provided by law.

(2) Products of distillation containing distilled spirits. All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

(3) Imported perfumes containing distilled spirits. There shall be levied and collected upon all perfumes imported into the United States containing distilled spirits, a tax of \$10.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

Such tax shall be collected by the collector of customs and deposited as internal revenue collections, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe. On and after April 1, 1955, the rate of tax imposed by this paragraph shall be \$9 in lieu of \$10.50.

(4) Alcoholic compounds from Puerto Rico and Virgin Islands

(A) Puerto Rico. Except as provided in section 3123, upon bay rum, or any article containing alcohol, brought from Puerto Rico into the United States for consumption or sale there shall be paid a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States, to be collected at the port of entry by the collector of internal revenue of the district in which the port is located. The Commissioner, with the approval of the Secretary, is authorized to make such rules and regulations as may be necessary to carry this paragraph into effect.

(B) Virgin Islands. For provisions relating to tax on alcoholic compounds from the Virgin Islands, see section 3350.

(5) Rectified spirits and wines. In addition to the tax imposed by this chapter on distilled spirits and wines, there shall be levied, assessed, collected, and paid, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3254(g): *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics or to vodka produced from pure spirits in the manner authorized at registered distilleries.

(6) Wines containing more than 24 percent of absolute alcohol

For taxation as distilled spirits of wines containing more than 24 per centum of absolute alcohol by volume, see section 3030(a) (1).

(7) Special taxes

For special taxes, see section 3250.

(8) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(b) Time for payment

(1) Bonded distilled spirits. For time for payment of tax on bonded distilled spirits, see paragraph (1) of subsection (a).

(2) Distilled spirits not bonded. The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time within the period of limitation provided in section 3312, when knowledge of such fact is obtained by the Commissioner, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

(3) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(c) Time of attachment. The tax shall attach to distilled spirits, spirits, alcohol or alcoholic spirit, within the meaning of subsection (b) of section 2809 as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(d) Persons liable. Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling

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apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(e) Lien

(1) **Property subject to.** The tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until (except as provided in paragraph (3)), the said tax is paid.

(2) **Exception during term of bonds.** No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under the provisions of this subsection, by reason of distilling done during any period included within the term of any bond taken under the provisions of section 2815(b) (1) (C).

(3) **Extinguishment.** Any lien under paragraph (1) on any land or any building thereon shall be held to be extinguished, if (1) such land and building are no longer used for distillery purposes, and (2) there is no outstanding liability for taxes or penalties imposed by law on the distilled spirits produced therein, and (3) no litigation is pending in respect of any such tax or penalty.

(4) **Certificate of discharge.** Any person claiming any interest in any such land or building may apply to the collector for a duly acknowledged certificate to the effect that such lien is discharged and, if the Commissioner determines that any such lien is extinguished, the collector shall issue such certificate, and any such certificate may be recorded.

(f) **Collection of tax on imported distilled spirits.** The internal revenue tax imposed by paragraphs (1) and (2) of subsection (a) upon distilled spirits imported into the United States shall, under regulations prescribed by the Commissioner, with the approval of the Secretary, be collected and deposited in the same manner as other internal revenue taxes, except that such collection and depositing shall be by the collector of customs instead of by the collector of internal revenue. Such tax shall be in addition to any customs duty imposed under the Tariff Act of 1930, 46 Stat. 590, or any subsequent Act. Distilled spirits smuggled or brought into the United States unlawfully shall, for the purpose of this subsection and paragraphs (1) and (2) of subsection (a), be held to be imported into the United States. Section 2805 shall be applicable to the disposition of imported spirits.

(g) **Defense tax for five years.** In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-Tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
2800(a) (1)	Distilled spirits generally	\$2.25	\$3.00
2800(a) (1)	Brandy	2.00	2.75
2800(a) (3)	Imported perfumes	2.25	3.00

(h) Floor stocks tax

(1) Upon all distilled spirits produced in or imported into the United States upon which the internal-revenue tax imposed by law has been paid, and which on July 1, 1940, are held and intended for sale or for use in

the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of 75 cents on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon. The tax imposed by this subsection shall not apply to one hundred wine gallons of the retail stocks of distilled spirits held by a person on premises as to which such person has incurred occupational tax as a retail dealer in liquors for the period beginning on July 1, 1940, and as to which no other occupational tax with respect to dealing in distilled spirits has been incurred by such person for a period beginning on such date.

(2) Every person required by this subsection to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than February 1, 1941, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe. Every retail dealer in liquors (even though not liable to pay such tax) shall make the return required by this paragraph.

(3) All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder.

(i) Floor stocks tax

(1) Upon all distilled spirits upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of \$1 (except that in the case of brandy, the rate shall be \$1.25) on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

(2) Every person required by this subsection to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(3) All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g).

(j) 1942 Floor stocks tax

(1) Tax. Upon all distilled spirits upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title VI of the Revenue Act of 1942, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of \$2 on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

(2) Returns. Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by paragraph (1) to pay any floor stocks tax shall, on or before the end of the

thirtieth day following the effective date of Title VI of the Revenue Act of 1942 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title VI of the Revenue Act of 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(3) Laws applicable. All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254 (g).

(k) 1944 Floor stocks tax

(1) Tax. Upon all distilled spirits upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title III of the Revenue Act of 1943, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of \$3 on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

(2) Returns. Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by paragraph (1) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of Title III of the Revenue Act of 1943 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title III of the Revenue Act of 1943, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(3) Laws applicable. All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254 (g).

(l) 1951 Floor stocks tax

(1) Tax. Upon all distilled spirits upon which the internal revenue tax imposed by law has been paid, and which on the effective date of section 451(a) of the Revenue Act of 1951, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of \$1.50 on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

(2) Returns. Under such regulations as the Secretary shall prescribe, every person required by paragraph (1) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of section 451(a) of the Revenue Act of 1951 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of such section upon the filing of a bond for payment thereof in such form

and amount and with such surety or sureties as the Secretary may prescribe.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g). 53 Stat. 298, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 213(a), 54 Stat. 524; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 533(a, b, d), 55 Stat. 708; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 602(a, b, d), 56 Stat. 970, 971; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 308(a), 58 Stat. 67; Apr. 30, 1946, c. 244, Title V, § 507(a), 60 Stat. 157; Feb. 21, 1950, c. 36, § 1, 64 Stat. 20; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 451, 65 Stat. 524; May 22, 1952, c. 322, § 1, 66 Stat. 89; Mar. 31, 1954, c. 126, Title VI, § 601(a) (1), (2), 68 Stat. 45.

Historical Note

References in Text. Tariff Act of 1930, referred to in subsec. (f), is classified to chapter 4 of Title 19, Customs Duties.

Effective date of Title VI of the Revenue Act of 1942, referred to in subsec. (j) (1) (2), commenced on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E. W. T. See "Effective Date of 1942 Amendment" note under this section.

Effective date of Title III of the Revenue Act of 1943, referred to in subsec. (k) (1) (2), commenced on the first day of the first month which began more than 10 days after Feb. 25, 1944, 12:49 p. m., E. W. T. See "Effective Date of 1944 Amendment" note under this section.

Section "451(a) of the Revenue Act of 1951," referred to in subsec. (2) (1) (2), is section 451(a) of Act Oct. 20, 1951, which amended subsec. (a) (1) of this section. For effective date of such amendment, see note under section 1650 of this title.

1954 Amendment. Subsec. (a) (1) amended by Act Mar. 31, 1954, § 601(a) (1), which in second sentence substituted "April 1, 1955" for "April 1, 1954".

Subsec. (a) (3) amended by Act Mar. 31, 1954, § 601(a) (2), which in third sentence substituted "April 1, 1955" for "April 1, 1954".

1952 Amendment. Subsec. (a) (5) amended by Act May 22, 1952, to relieve from the rectification tax vodka produced from pure spirits in the manner authorized at registered distilleries.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 451(a) which substituted "\$10.50" in lieu of "\$8", and added second sentence.

Subsec. (a) (3) amended by Act Oct. 20, 1951, § 451(b), which substituted "\$10.50" in lieu of "\$8", and added third sentence.

Subsec. (2) added by Act Oct. 20, 1951, § 451(c).

1950 Amendment. Subsec. (a) (1) amended by Act Feb. 21, 1950, which added pars. (A) and (B).

1946 Amendment. Subsec. (a) (4) amended by Act Apr. 30, 1946, which deleted "Philippines" from subsec. catchline, and amended subpar. (B) by deleting "and Philippines" from catchline and from text following "Virgin Islands".

1944 Amendment. Subsec. (k) added by Act Feb. 25, 1944.

1942 Amendment. Subsec. (a), pars. (1) and (3) amended by Act Oct. 21, 1942, which substituted "\$6." for "\$4."

Subsec. (j) added by Act Oct. 21, 1942.

1941 Amendment. Subsecs. (a) (1) and (a) (3) amended and subsec. (i) added by Act Sept. 20, 1941, § 533(a), (b), (d), respectively.

1940 Amendment. Subsecs. (g), (h) added by Act June 25, 1940.

Effective Date of 1952 Amendment. Section 2 of Act May 22, 1952 provided that the amendment of subsec. (a) (5) by section 1 of said Act May 22, 1952, should take effect on the first day of the first month which begins more than 10 days after May 22, 1952.

Effective Date of 1951 Amendment. Amendments of this section by Act Oct. 20, 1951, as effective on the first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 1650 of this title.

Effective Date of 1950 Amendment. Section 10 of Act Feb. 21, 1950, provided that: "The amendments made by this Act [Act Feb. 21, 1950] shall become effective on the first day of the first month which begins six months or more after the date of the enactment of this Act."

Effective Date of 1946 Amendment. Amendment of this section by Act Apr. 30, 1946 was made effective on May 1, 1946, by section 1 of said Act which is

set out as a note under section 1251 of Title 22, Foreign Relations and Inter-course.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on first day of the first month which began more than 10 days after the date of the enactment of this Act by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct 21, 1942, 4:30 p. m., E. W. T., by section 601 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with Oct. 1, 1941, by section 536 thereof.

Tax and Customs Duties Refunds on Spirits Lost in Floods of 1951. Section 498 of Act Oct. 20, 1951 provided that:

"(a) **Authorization.** The Secretary of the Treasury is authorized and directed to make refund, or allow credit in the case of a distiller or rectifier if he so elects, in the amount of the internal-revenue tax and customs duties paid on spirits previously withdrawn, and lost or rendered unmarketable, by reason of the floods of 1951 while such spirits were in the possession of (1) the person originally paying such tax or such tax and duty on such spirits, (2) a rectifier for rectification or for bottling, or which have been used in the process of rectification, under Government supervision as provided by law and regulations, or (3) a wholesale or retail liquor dealer, all hereafter referred to as the possessor or possessors. The refunds and credits authorized by this section may be made to (1) any of the possessors, except a retail liquor dealer, or (2) to any distiller, rectifier, importer, or wholesale liquor dealer who replaced for the possessor the full equivalent of the distilled spirits so destroyed or rendered unmarketable, without compensation, remuneration, payment, or credit of any kind in respect of the tax, or tax and duty on such distilled spirits. A claim for the amount of such tax, or such tax and duty, shall be filed with the Secretary of the Treasury within ninety days from the date of enactment of this Act [Oct. 20, 1951]. The claimant shall furnish proof to the Secretary's satisfaction that (1) the internal-revenue tax on such spirits, or the tax and duty if imported, was fully paid, (2) such spirits were lost, or rendered unmarketable, by reason of damage sustained as the result of the aforesaid flood conditions, (3) claimant was not indemnified by any valid claim of insurance or otherwise against loss of the tax (or tax and duty if imported) paid on the spirits, and (4) in those cases where applicable, that the claimant has replaced for the possessor the full equivalent of the distilled spirits so destroyed or rendered unmarketable, without compensation, remuneration, payment, or

credit of any kind in respect of the tax, or tax and duty, on such distilled spirits.

"(b) **Destruction of spirits.** When the Secretary, pursuant to this section, makes refund, or allows credit, in the amount of the tax, or tax and duty, on spirits rendered unmarketable, such spirits shall be destroyed under the supervision of the Secretary.

"(c) **Credit.** Where credit is allowed to a distiller or rectifier for the internal-revenue tax previously paid as aforesaid, the Secretary is authorized and directed to provide for the issuance of stamps to cover the tax on spirits subsequently withdrawn or rectified to the extent of the credit so allowed.

"(d) **Regulations.** The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section."

Distilled Spirits in Foreign Trade Zones at Time of Tax Increase. Collection of all taxes on distilled spirits which were in foreign trade zones at time of effective date of tax increase made by Act Oct. 20, 1951, and subsequently received in customs territory of United States, see note under section 2000 of this title.

Tax Refunds on Distilled Spirits Brought In from Foreign Trade Zones after April 1, 1954. Tax credits or refunds on distilled spirits brought in from foreign trade zones on or after April 1, 1954, see note under section 2000 of this title.

Termination of Rates. Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 536, 550(a), 55 Stat. 710, 715, provided for the termination of the applicability of the rates specified in subsec. (g) of this section as follows:

"[§ 536.] The amendments made by this Part [Act Sept. 20, 1941, Title V, Part III, §§ 531-536, affecting sections 1807, 1850, 2800, 2887, 3030, 3192, and 3400 of this title] shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1850(a), section 1807(b), section 2004, section 2800(g) and section 3190 of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

"[§ 550.] (a) The amendments made by this Part [Act Sept. 20, 1941, Title V, Part IV, §§ 541-550, affecting Title 26, Internal Revenue Code, §§ 1700, 1701, 1710, 1712, 1715, 1718, 3403, 3404, 3405, 3409, 3441, 3463, 3466; and Title 16, Conservation, §§ 18e, 407d] shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1050(a), section 1807 (b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20,

[1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see Volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055. See, also, Acts May 22, 1952, 1952 U.S. Code Cong. & Adm. News, p. 1481; Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Feb. 21, 1950, 1950 U.S. Code Cong. Service, p. 1931.

§ 2801. Rectified spirits

(a) Rate of tax

For rate of tax, see section 2800(a) (5).

(b) **Proof and volume.** When the process of rectification is completed and the taxes prescribed by section 2800(a) (5) have been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the taxes have theretofore been paid.

(c) Exemption from tax

(1) **Cordials and liqueurs.** The taxes imposed by section 2800(a) (5) shall not attach to cordials or liqueurs on which a tax is imposed and paid under paragraph (1) or (2) of section 3030(a), nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below eighty proof; nor to blends made exclusively of two or more pure fruit brandies distilled from the same kind of fruit, aged in wood for a period not less than two years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below eighty proof: *Provided*, That such blended whiskies and blended fruit brandies shall be exempt from tax under section 2800(a) (5) only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner, with the approval of the Secretary, may prescribe.

(2) **Absolute alcohol.** The process of extraction of water from high-proof spirits for the production of absolute alcohol shall not be deemed to be rectification within the meaning of section 3254(g), and absolute alcohol shall not be subject to the tax imposed by section 2800(a) (5), but the production of such absolute alcohol shall be under such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(d) **Regulations—Use of distilled spirits or wines.** All distilled spirits or wines taxable under section 2800(a) (5) shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

(e) Rectifying

(1) **Regulations.** The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, shall prescribe such regulations under this section and paragraph (5) of section 2800(a) as he deems necessary.

(2) **Premises of rectifier.** The premises of a rectifier shall be as described in his notice and, whether they consist of an entire building or of rooms in a building, shall have means of ingress from and egress into a public street or yard, or into a public hall or elevator shaft leading into a public street or yard, and shall be used exclusively for the business of rectification and the bottling of liquors rectified by him thereon, and the bottling of wines and spirits without rectification. Any rectifier who uses his rectifying premises contrary to the provisions of this paragraph shall be fined not more than \$50 with respect to each day upon which any such use occurs, but shall not, on account of such use, be subject to the penalties otherwise prescribed in this section.

(3) **Filtering and purifying wines.** The filtering, clarifying, or purifying of wines on bonded winery premises or bonded storeroom premises shall not be deemed to be rectification within the meaning of section 3254(g).

(4) **Vermouth manufactured with fortified wines.** The manufacture of vermouth with fortified sweet wine on bonded winery premises shall not be deemed to be rectification within the meaning of section 3254(g), if distilled spirits other than necessary in the production of approved essences, used in the manufacture of vermouth, whether or not such essences are produced on the bonded winery premises, are not added to the fortified sweet wine used in the manufacture thereof or to such vermouth during or after its manufacture. Such vermouth may be manufactured on bonded winery premises, but only in a separate department thereof, under such supervision and in accordance with such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The provisions of this paragraph shall apply in the same manner and to the same extent to aperitif wines other than vermouth.

(5) **Blending of beverage brandies.** Fruit brandies distilled from the same kind of fruit at not more than one hundred and seventy degrees proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, by the distiller thereof in any internal revenue bonded warehouse operated by him exclusively for the storage of brandy or wine spirits, and the provisions of this section and of sections 2800(a) (5) and 3254(g) relating to rectification or other internal revenue laws of the United States shall not be held to apply to or prohibit such mixing or blending, and brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn from bond tax-paid or tax-free, or be otherwise disposed of, in the same manner as such brandies not so mixed or blended: *Provided*, That, in addition to the tax imposed by this chapter on the production of distilled spirits, there shall be paid a tax of 30 cents as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of brandy so mixed or blended (except when withdrawn tax-free and accounted for or when lost and allowance is made therefor), such tax to be paid by rectified spirits stamps affixed to the packages at the time of withdrawal. The Commissioner, under rules and regulations to be by him prescribed with the approval of the Secretary, upon the presentation of proof to his satisfaction of the loss by leakage, evaporation, theft, or otherwise of fruit brandies so blended or mixed, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents, is hereby authorized to remit or refund the taxes assessed or paid upon such lost brandies: *Provided, however*, That such remission or refund shall be allowed only to the extent that the warehouseman is not indemnified or recompensed for such tax, and that losses of fruit brandies occurring prior to any such mixing or blending shall be allowable in accordance with section 2901. The term "distiller" as used herein shall include any one or more distillers

associated as members of any farm cooperative, or any one or more distillers affiliated within the meaning of section 17(a) (5) of the Federal Alcohol Administration Act, as amended, or any fruit distiller for whose account, recorded with the district supervisor at the time of production, the brandy to be blended was produced. The Commissioner may, with the approval of the Secretary, make such rules or regulations as he may deem necessary to carry these provisions into effect.

(f) **Penalties.** Except as provided in subsection (e) (2), whoever violates any of the provisions of this section or section 2800(a) (5) shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years, and shall, in addition, be liable to double the tax evaded, together with the tax, to be collected by assessment or on any bond given. 53 Stat. 300, amended July 14, 1947, c. 246, § 1(1), 61 Stat. 320; July 14, 1947, c. 247, 61 Stat. 320; Oct. 10, 1951, c. 458, 65 Stat. 371.

Historical Note

References in Text. Section 17(a) (5) of the Federal Alcohol Administration Act, referred to in subsec. (e) (5), is set out as section 211(a) (4) of Title 27, Intoxicating Liquors.

1951 Amendment. Subsec. (c) (1) amended by Act Oct. 10, 1951 to exempt from the rectification tax certain blends of whiskies and brandies even though such blends are reduced as low as 80 proof.

1947 Amendment. Subsec. (e) (4) amended by Act July 14, c. 246, which deleted "having no interior communication with any other department or part of such premises" following "separate de-

partment thereof", and added last sentence extending application of par. to aperitif wines other than vermouth.

Subsec. (e) (5) added by Act July 14, 1947, c. 247.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 10, 1951, see 1951 U. S. Code Cong. Service, p. 2246. See, also, Acts July 14, 1947, cc. 247, 246, 1947 U. S. Code Cong. Service, pp. 1292, 1291.

§ 2802. Stamps for distilled spirits

(a) **Issue for restamping.** The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of distilled spirits, which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(b) Accountability

(1) **Other stamps.** All stamps relating to distilled spirits, other than the tax-paid stamps, shall be charged to collectors; and the books containing such stamps may be intrusted by any collector to the storekeeper-gauger of the district, who shall make a daily report to the collector of all such stamps used by him and for whom used; and when all the stamps contained in any such book have been issued, the storekeeper-gauger of the district shall return the book to the collector, with all the marginal stubs therein. Except as provided in section 2878(b), all export stamps issued to collectors shall be charged to them as representing the value of 10 cents for each stamp, and they shall collect the amount due for such stamps at the rate of 10 cents for each stamp issued in such manner and at such time as the Commissioner may prescribe, and the Commissioner may, in his discretion, make assessment therefor.

(2) **Transfer of duties.** For transfer of powers and duties of Commissioner and his agents, see section 3170.

(c) **Exchange of wholesale liquor dealers' stamps for rectified spirits stamps.** Collectors shall not furnish wholesale liquor dealers' stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages. 53 Stat. 301, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Act Feb. 21, 1950, amended section generally by striking out subsecs. (a), (c), (d) (1), and redesignating subsecs. (b), (d), and (e) to be subsecs. (a), (b), (c), and by redesignating pars. (2) and (3) of former subsec. (d) to be pars. (1) and (2) of present subsec. (b).

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the

first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S.Code Cong.Service, p. 1931.

§ 2803. Stamps for containers of distilled spirits

(a) **Requirement.** No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits. The provisions of this section shall not apply to—

(1) Distilled spirits placed in a container for immediate consumption on the premises or for preparation for such consumption;

(2) Distilled spirits in bond or in customs custody;

(3) Distilled spirits in immediate containers required to be stamped under existing law;

(4) Distilled spirits in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(5) Distilled spirits on which no internal-revenue tax is required to be paid;

(6) Distilled spirits not intended for sale or for use in the manufacture or production of any article intended for sale; or

(7) Any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

(b) **Purchase and supply.** Any person placing or intending to place any distilled spirits upon which all internal-revenue taxes have been paid into any container upon which a stamp is required by this section, or withdrawing or intending to withdraw any imported spirits in such containers from customs custody, shall be entitled to purchase sufficient stamps for stamping such containers. Such stamps shall be issued by the Commissioner to each Collector, upon his requisition, in such numbers as may be necessary in his district, and shall be sold by the Collectors to persons entitled thereto upon application therefor and compliance with regulations under this section, at a price of 1 cent for each stamp, except that in the case of stamps for containers of less than one half pint the price shall be one quarter of 1 cent for each stamp. When in his judgment there is no danger to the revenue, and upon the giving of such bonds or other security as he may deem necessary, the Commissioner may authorize the sale of such stamps to importers for stamping containers in the country from which imported.

(c) **Unused stamps; exchange, refund, etc.** The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused stamps issued under section 203 of the Liquor Taxing Act of 1934 or subsection (b) of this section by exchanging them for other stamps of the same kind or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of \$5 or more: *And provided further*, That no claim for the

exchange of strip stamps or refund therefor shall be allowed unless presented within two years after the date on which such stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

(d) **Regulations for issuing, affixing, and canceling stamps.** The Commissioner, with the approval of the Secretary, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying stamps required by this section, the form and denominations of such stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps, and (b) such other regulations as he shall deem necessary for the enforcement of this section.

(e) **Destruction of stamps.** Every person emptying any container stamped under the provisions of this section shall at the time of emptying such container destroy the stamp thereon.

(f) **Forfeiture of spirits.** All distilled spirits found in any container required to bear a stamp by this section, which container is not stamped in compliance with this section and regulations issued thereunder, shall be forfeited to the United States.

(g) **Penalties.** Any person who violates any provision of this section, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under this section, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be destroyed by this section, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required to be destroyed by this section, or who places any distilled spirits in any bottle which has been filled and stamped under this section without destroying the stamp previously affixed to such bottle, or who affixes any stamp issued under this section to any container of distilled spirits on which any tax due is unpaid, or who makes any false statement in any application for stamps under this section, or who has in his possession any such stamps obtained by him otherwise than as provided in subsection (b), shall on conviction be punished by a fine not exceeding \$1,000, or by imprisonment at hard labor not exceeding five years, or by both. Any officer authorized to enforce any provisions of law relating to internal revenue stamps is authorized to enforce the provisions of this section and the provisions of section 2909 relating to the bottling of distilled spirits in bond.

(h) Transfer of duties

For transfer of duties and powers of the Commissioner and his agents, see section 3170.

53 Stat. 303, amended June 24, 1940, c. 416, § 1, 54 Stat. 512.

Historical Note

References in Text. Section 203 of the Liquor Taxing Act of 1934, referred to in subsec. (c), refers to Act Jan. 11, 1934, c. 1, § 203, 48 Stat. 316, from which said subsec. (c) was derived.

1940 Amendment. Subsec. (c) amended by Act June 24, 1940.

Time For Claim For Refund. Sec. 3 of Act June 24, 1940, provided: "Notwithstanding the limitations contained in sections 2803(c) and 2903(e), Internal Revenue Code, as amended and inserted,

respectively, by this Act, as to the time within which claims under such sections must be presented, claims under such sections for the exchange of or refund for stamps lawfully issued prior to the date of enactment of this Act may be allowed if presented within two years from the date of enactment of this Act."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2804. Detention of casks or packages on suspicion

(a) **Power of revenue officer.** It shall be lawful for any internal revenue officer to detain any cask or package containing, or supposed to contain, distilled spirits, when he has reason to believe that the tax imposed by law upon the same has not been paid, or that the same is being removed in violation of law; and every such cask or package may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than forty-eight hours without process of law or intervention of the officer to whom such detention is to be reported.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 304.

§ 2805. Distilled spirits subject to forfeiture, distraint, or judicial process

(a) **Forfeiture**

(1) **Delivery to the Secretary.** All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Secretary to be disposed of as hereinafter provided.

(2) **Disposal by the Secretary.** The Secretary shall dispose of all distilled spirits, wine, and malt beverages which have been delivered to him pursuant to subsection (a)—

(A) By delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal, scientific, or mechanical purposes; or

(B) By gift to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal purposes; or

(C) By destruction.

(3) **Limitation on disposal.** No distilled spirits, wine, or malt beverages which have been seized under any law of the United States, may be disposed of in any manner whatsoever except after forfeiture and as provided in this section.

(4) **Regulations.** The Secretary is authorized to make all rules and regulations necessary to carry out the provisions of this section.

(5) **Remission, or mitigation of forfeitures.** Nothing in this section shall affect the authority of the Secretary, under the customs or internal-revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of such distilled spirits, wines, or malt beverages, or the authority of the Commissioner, with the approval of the Secretary, to compromise any civil or criminal case in respect of such distilled spirits, wines, or malt beverages prior to commencement of suit thereon, or the authority of the Secretary to compromise any claim under the customs laws in respect of such distilled spirits, wines, or malt beverages.

(b) **Distraint or judicial process.** Except as provided in section 3074, all distilled spirits sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. If any tax-paid stamps are affixed to any such cask or package, such stamps shall be obliterated and destroyed by the collector or marshal before such sale: *Provided*, That in all cases wherein it shall appear that any distilled spirits offered for sale on distraint for taxes, where the taxes on such spirits have not been paid, or offered for sale for the benefit of the United States

under order of court, will not, by reason of such spirits being below proof, bring a price equal to the tax due and payable thereon, but will bring a price equal to, or greater than, the tax on said spirits, computed only upon the proof gallons contained in the packages, without regard to the greater number of wine gallons contained therein, then, and in such case, upon sale being so made, tax-paid stamps to the amount required to stamp such spirits as if the tax thereon were only on the proof gallons thereof, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered. Any collector using or furnishing stamps in manner aforesaid, on presenting vouchers satisfactory to the Commissioner, shall be allowed credit for the same in settling his stamp account with the department. In such cases, the officer selling the distilled spirits shall affix, or cause to be affixed, to the same the tax-paid stamps so provided, and shall write across the face of such stamps the true number of proof and wine gallons contained in the package, the amount of tax actually paid thereon, and also the words "Affixed under provisions of Internal Revenue Code, section 2805(b)."

(c) Cross references

(1) **Marks, brands, and stamps.**—For other provisions relating to stamping, marking, and branding distilled spirits sold under distraint or judicial process, see section 3725.

(2) **Transfer of duties.**—For transfer of power and duties of Commissioner and his agents, see section 3170.

53 Stat. 304.

§ 2806. Penalties and forfeitures

(a) Creation of fictitious proof

(1) **Penalty.** Every person who adds or causes to be added any ingredient or substance to any distilled spirits before the tax is paid thereon, for the purpose of creating a fictitious proof, shall be fined not less than \$100 nor more than \$1,000 for each cask or package so adulterated, and imprisoned not less than three months nor more than two years; and

(2) **Forfeiture.** Every such cask or package, with its contents, shall be forfeited to the United States.

(b) Unlawful affixing, canceling, or issue of stamps by officer

(1) **Penalty.** Whenever any revenue officer affixes or cancels, or causes or permits to be affixed or canceled, any stamp relating to distilled spirits provided for by law, in any other manner or in any other place, or issues the same to any other person than as provided by law, or by regulation made in pursuance thereof, or knowingly affixes, or permits to be affixed, any such stamp to any cask or package of spirits of which the whole or any part has been distilled, rectified, compounded, removed, or sold, in violation of law, or which has in any manner escaped payment of tax due thereon, he shall, for every such offense, be fined not less than \$500 nor more than \$3,000, and be imprisoned for not less than six months nor more than three years.

(2) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(c) **Forfeiture of tax-paid distilled spirits remaining on distillery premises.** No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

(d) **Forfeiture of distilled spirits in unstamped casks or packages.** All distilled spirits found in any cask or package containing five gallons

or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

(e) **Evasion of tax, penalty.** Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded.

(f) **Tax fraud by distiller.** Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he—

(1) **Forfeiture.** Shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and—

(2) **Penalty.** Shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than three years.

No discontinuance or nolle prosequi of any prosecution under this subsection shall be allowed without the permission in writing of the Attorney General.

(g) **Offenses not specifically covered.** If any distiller, rectifier, or wholesale liquor dealer, shall knowingly or willfully omit, neglect or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of \$1,000; and all distilled spirits or liquors owned by him or in which he has any interest as owner, shall be forfeited to the United States.

(h) **Cross references**

For penalties and forfeitures relating to the following offenses, see the sections enumerated below:

- (1) Removal or transportation under improper brands, section 3173(a).
- (2) Possession with intent to sell in fraud of law or to evade tax, section 3320.
- (3) Removal or concealment with intent to defraud the revenue, section 3321.
- (4) Forfeiture of packages containing forfeited goods, section 3322.
- (5) Provisions relating to emptied stamped packages, section 3323.
- (6) Sales to evade tax, section 3324.
- (7) False statements to purchasers regarding tax, section 3325.
- (8) Fraudulently claiming drawback, section 3326.
- (9) Fraudulent bonds, permits and entries, section 3793(a).
- (10) Fraudulent returns, affidavits, and claims, section 3793(b).
- (11) Refusal to permit entry or examination, section 3601(b).
- (12) Forcibly obstructing officers, section 3601(c) (1).
- (13) Forcibly rescuing property, section 3601(c) (2).
- (14) Failure to file return, section 3612(d) (1).
- (15) False or fraudulent return, section 3612(d) (2).
- (16) Other offenses, section 3793(c).

53 Stat. 306.

§ 2807. **Disposal of forfeited equipment and material for distilling**

All boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this chapter, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law. 53 Stat. 307.

§ 2808. Instruments to prevent and detect fraud

(a) **Power of the Commissioner.** For the prevention and detection of frauds by distillers of spirits, the Commissioner may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 307.

§ 2809. Definitions

(a) **Distiller.** Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

(b) Distilled spirits.

(1) **General definition.** Distilled spirits, spirits, alcohol, and alcoholic spirits, within the true intent and meaning of this chapter, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance.

(2) **Products of rectification.** As used in section 2803, the term "distilled spirits" includes products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g).

(c) **Proof spirits.** Proof spirits shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (.7939) at sixty degrees Fahrenheit.

(d) **Gallon.** In all sales of spirits a gallon shall be held to be a gallon of proof spirit, according to the standard prescribed in the preceding subsection, set forth and declared for the inspection and gauging of spirits throughout the United States.

(e) **Person.** As used in section 2803, the term "person" includes an individual, a partnership, an association, and a corporation. 53 Stat. 307.

PART II.—DISTILLING AND RECTIFYING**§ 2810. Registry of stills**

(a) **Requirement.** Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner. Stills and distilling apparatus shall be registered immediately upon their being set up.

§ 2810

LIQUOR—DISTILLED SPIRITS

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited.

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of \$500, and shall be fined not less than \$100, nor more than \$1,000, and imprisoned for not less than one month, nor more than two years.

Still and distilling apparatus set up at refineries for the refining of crude petroleum or the production of petroleum products and not used in the manufacture of distilled spirits are not required to be registered under this section.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 308, amended July 2, 1940, c. 510, 54 Stat. 715.

Historical Note

1940 Amendment. Subsec. (a) amended by Act July 2, 1940, which added last par.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2811. Return of materials used in the manufacture of distilled spirits

Every person disposing of any substance of the character used in the manufacture of distilled spirits shall, when required by the Commissioner, render a correct return in such form and manner as the Commissioner, with the approval of the Secretary, may by rules and regulations prescribe, showing the names and addresses of the persons to whom such disposition was made, with such details, as to the quantity so disposed of or other information which the Commissioner may require as to each such disposition, as will enable the Commissioner to determine whether all taxes due with respect to any distilled spirits manufactured from such substances have been paid. Any person who willfully violates any provision hereof, or of any such rules or regulations, and any officer, director, or agent of any such person who knowingly participates in such violation, shall upon conviction be fined not more than \$500 or be imprisoned for not more than one year, or both. As used in this section, (a) the term "distilled spirits" has the same meaning as that in which it is used in section 2803; (b) the term "person" includes individuals, corporations, partnerships, associations, trusts, and other incorporated and unincorporated organizations; and (c) the term "substance of the character used in the manufacture of distilled spirits" includes, but not by way of limitation, molasses, corn sugar, cane sugar, and malt sugar. 53 Stat. 308.

§ 2812. Notice of business of distiller or rectifier

(a) Requirements. Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, shall give notice in writing, subscribed by him, to the collector of the district wherein such business is to be carried on, stating his name and residence, and if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, the precise place where said business is to be carried on, and whether of distilling or rectifying; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. In case of a distiller, the notice shall also

state the kind of stills and the cubic contents thereof, the number and kind of boilers, the number of mash tubs and fermenting tubs, the cubic contents of each tub, the number of receiving cisterns, the cubic contents of each cistern, the number of hours in which the distillery will ferment each tub of mash or beer, the estimated quantity of distilled spirits which the apparatus is capable of distilling every twenty-four hours, a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction; and that said distillery premises are not within six hundred feet (or the distance permitted by the Secretary pursuant to law), in a direct line, of any premises authorized to be used for rectifying or refining distilled spirits by any process.

In case of a rectifier, the notice shall state the precise place where such business is to be carried on, the name and residence of every person interested or to be interested in the business, the process by which the applicant intends to rectify, purify, or refine distilled spirits, the kind and cubic contents of any still used or to be used for such purpose, the estimated quantity of spirits which can be rectified, purified, or refined every twenty-four hours in such establishment, and that said rectifying establishment is not within six hundred feet (or the distance permitted by the Secretary pursuant to law), in a direct line, of the premises of any distillery registered for the distillation of spirits.

In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery or rectifying establishment, or in the time of fermenting the mash or beer, notice thereof, in writing, shall be given to the said collector or proper deputy collector, of the district within twenty-four hours after such change; and any deputy collector receiving such notice shall immediately transmit the same to the collector of the district. Every notice required by this section shall be in such form, and shall contain such additional particulars, as the Commissioner may, from time to time, prescribe.

Every person who fails or refuses to give such notice shall pay a penalty of \$1,000, and shall be fined not less than \$100 nor more than \$2,000; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine, be imprisoned not less than six months nor more than two years.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 309.

§ 2813. Notice of intention to rectify

(a) **Requirements.** When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector for the district of his intention so to rectify, and, except as provided in section 2861, submit such package for the inspection of a storekeeper-gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as hereinabove provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 310.

§ 2814. Distiller's bond

(a) Form and approval

(1) **In general.** Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the 1st day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less than the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. But in no case shall the bond exceed the sum of \$100,000.

The collector may refuse to approve said bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the Commissioner, whose decision in the matter shall be final. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency at the discretion of the collector or Commissioner.

Every person who fails or refuses to give the bond hereinbefore required, or to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit the distillery, distilling apparatus, and all real estate and premises connected therewith, and shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than two years.

(2) **When exempt from survey requirements.** Whenever, under authority of law, the Secretary shall relieve a distiller from the survey requirements of section 2817, he may likewise by regulation fix the penal sum of the distiller's bond, but in no case shall the amount of the minimum bond be less than \$5,000 nor the amount of the maximum bond greater than \$100,000.

(b) Cross references

(1) **Ethyl alcohol distillers exempt from certain requirements**

For bond of ethyl alcohol distillers exempted from certain requirements, see section 2848.

(2) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 310.

§ 2815. Conditions of approval of distiller's bond

(a) **General.** No collector shall approve the bond of any distiller until all the requirements of the law and all regulations made by the Commissioner in relation to distilleries, in pursuance thereof, have been complied with.

Every collector who violates this provision shall forfeit and pay \$2,000, and be dismissed from office.

(b) **Ownership of land or consent of owner**

(1) **Requirements.** No bond of a distiller shall be approved unless—

(A) The distiller is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated; or

(B) The distiller files with the officer designated for the purpose by the Commissioner, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment-creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of the distillery premises, or any part thereof, the title to the same shall vest in the United States, discharged from such mortgage, judgment, or other encumbrance; or, if consent as required under this paragraph cannot be obtained,

(C) The distiller, with the approval of the Commissioner, files with the officer designated by the Commissioner a bond, approved by the Commissioner, in the penal sum equal to the appraised value of the lot or tract of land on which the distillery is situated, the distillery, the buildings, and the distilling apparatus. Such value shall be determined, and such bond shall be executed, in such form and with such sureties, and filed with the officer designated by the Commissioner, under such regulations as the Secretary shall prescribe.

(D) In case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken at the discretion of the Commissioner, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

(2) Cross references

(A) Distilleries erected prior to July 20, 1868

For distilleries erected prior to July 20, 1868, see section 3180.

(B) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(c) **Approval as condition to commencing business.** No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a distiller, rectifier, brewer, or winemaker, shall commence or continue the business of a distiller, rectifier, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Commissioner or such other officer of the Bureau of Internal Revenue as the Commissioner, with the approval of the Secretary, may designate.

(d) **Disapproval.** The Commissioner or the designated officer may disapprove any such bond or bonds if the individual, firm, partnership, corporation, or association giving the same, or owning, controlling, or actively participating in the management of the business of the individual or firm, partnership, corporation, or association giving the same, shall have been previously convicted, in a court of competent jurisdiction, of (1) any fraudulent noncompliance with any provision of any law of the United States if such provision related to internal-revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association upon payment of penalties or otherwise, or (2) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or other intoxicating liquor.

(e) **Appeal from disapproval.** In case the disapproval is by any officer other than the Commissioner, the individual, firm, partnership, corporation, or association giving the bond may appeal from such disapproval to the Commissioner.

The disapproval of the Commissioner in any matter under this section shall be final.

(f) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 311.

§ 2816. Plan of distillery

(a) Requirements. Except as provided in section 2824(a), every distiller and person intending to engage in the business of a distiller shall, previous to the approval of his bond, cause to be made, under the direction of the collector of the district, an accurate plan and description, in triplicate, of the distillery and distilling apparatus, distinctly showing the location of every still, boiler, doubler, worm tub, and receiving cistern, the course and construction of all fixed pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash tub, and fermenting tub, the cubic contents of every receiving cistern, and the color of each fixed pipe, as required in this chapter. One copy of said plan and description shall be kept displayed in some conspicuous place in the distillery, and two copies shall be furnished to the collector of the district, one of which shall be kept by him, and the other transmitted to the Commissioner. The accuracy of every such plan and description shall be verified by the collector, the draftsman, and the distiller; and no alteration shall be made in such distillery without the consent, in writing, of the collector. Any alteration so made shall be shown on the original, or by a supplemental plan and description, and a reference thereto noted on the original, as the collector may direct; and any supplemental plan and description shall be executed and preserved in the same manner as the original.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 312.

§ 2817. Survey of distillery

(a) Requirements. On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit producing capacity for a day of twenty-four hours.

In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour-mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner, with the

approval of the Secretary, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained by the collector, and one copy shall be transmitted to the Commissioner, and the survey shall take effect upon the delivery of such copy to the distiller.

Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required:

Provided, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the true spirit producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the remeasuring of the fermenting tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery:

And provided further, That the Commissioner may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for.

(b) **Waiver of requirements.** The Secretary in the case of any distillery may, under regulations, waive such of the requirements of this section as he determines may be waived without danger to the revenue. Whenever the Secretary, by authority of this subsection, waives any or all of the requirements of this section, he may, by regulation, relieve the distiller from such requirements of sections 2840(a), 2846(a), 2847(a), 2849, 2850(a), and 2851(a), and of such other provisions of law relating or incidental to survey requirements, as the Secretary determines may be waived without danger to the revenue.

(c) **Cross references**

(1) **Exemption of ethyl alcohol distillers**

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2848

(2) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170, 53 Stat. 312.

§ 2818. Notice of manufacture of and permit to set up still

(a) **Requirement.** Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, shall, before the same is removed from the place of manufacture, notify in writing the collector of the district in which such still, boiler, or other vessel is to be used or set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the said collector for that purpose; and

(b) **Penalty for setting up still without permit.** Any person who sets up any such still, boiler, or other vessel, without first obtaining a permit from the said collector of the district in which such still, boiler, or other vessel is intended to be used, or who fails to give such notice, shall pay in either case the sum of \$500, and shall forfeit the distilling apparatus thus removed or set up in violation of law.

(c) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 314.

§ 2819. **Premises prohibited for distilling**

No person shall use any still, boiler, or other vessel, for the purpose of distilling, in any dwelling house, or in any shed, yard, or inclosure connected with any dwelling house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager beer, ale, porter, or other fermented liquors, vinegar, or ether, are manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying, except that the Secretary is authorized to permit such use for distilling on premises at such lesser distance than six hundred feet as he prescribes, in any case in which he deems that such permission may be granted without danger to the revenue; and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done, shall be fined \$1,000 and imprisoned for not less than six months nor more than two years, in the discretion of the court, for each such offense: *Provided*, That saleratus may be manufactured, or meal or flour ground from grain, in any building or on any premises where spirits are distilled; but such meal or flour shall be used only for distillation on the premises: *Provided further*, That any boiler used in generating steam or heating water to be used in any distillery, may be located in any other building or on any other premises to be connected with such still or boiling tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes. 53 Stat. 314.

§ 2820. **Receiving cisterns in distilleries**

(a) **Requirements.** Except as provided in section 2824, the owner, agent, or superintendent of any distillery established as hereinbefore provided, shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner, two or more receiving cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; and each of said cisterns shall be so constructed as to leave an open space of at least three feet between the top thereof and the floor or roof above, and of not less than eighteen inches between the bottom thereof and the floor below, and shall be so situated that the officer can pass around the same, and shall be connected with the outlet of the worm or condenser by suitable pipes or other apparatus, so constructed as always to be exposed to the view of the officer, and so connected and constructed as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still or doubler, or forward to the receiving cistern. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the storekeeper-gauger designated for that duty; and all locks and seals required by law shall be provided by the Commissioner, at the expense of the United States; and the keys shall be in charge of the collector or such storekeeper-gauger as he may

designate. On the third day after the spirits are conveyed into such cistern they shall be drawn off into casks, under the supervision of such storekeeper-gauger and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery, the spirits may be drawn off from said cisterns, under the supervision of the storekeeper-gauger, at any time previous to the third day.

Whenever, under authority of law, the Secretary shall relieve a distiller from the survey requirements, he may, by regulation, require the distiller to provide such receiving cisterns, tanks, or such other equipment as the Secretary shall deem proper in order to protect the revenue.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 314.

§ 2821. Penalty for breaking locks or gaining access to cistern room or building

Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern room or building, or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than one year nor more than three years. 53 Stat. 315.

§ 2822. Requirements as to furnaces, tubs, doublers, worm tanks, and fixed pipes

(a) Requirements. The door of the furnace of every still or boiler used in any distillery shall be so constructed that it may be securely fastened and locked. The fermenting tubs shall be so placed as to be easily accessible to any revenue officer, and each tub shall have distinctly painted thereon in oil colors its cubic contents in gallons and the number of the tub. There shall be a clear space of not less than one foot around every wood still, and not less than two feet around every doubler and worm tank. The doubler and worm tanks shall be elevated not less than one foot from the floor; and every fixed pipe to be used by the distiller, except for conveyance of water, or of spent mash or beer only, shall be so fixed and placed as to be capable of being examined by the officer for the whole of its length or course, and shall be painted, and kept painted, as follows, that is to say: every pipe for the conveyance of mash or beer shall be painted of a red color; every pipe for the conveyance of low-wines back into the still or doubler shall be painted blue; every pipe for the conveyance of spirits shall be painted black, and every pipe for the conveyance of water shall be painted white. Whenever any fixed pipe is used by any distiller which is not painted or kept painted as herein directed, or which is painted otherwise than as herein directed, he shall forfeit the sum of \$1,000.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 315.

§ 2823. Changes in apparatus and fastenings

(a) Power of Commissioner. The Commissioner is authorized to order and require such changes of or additions to distilling apparatus, connecting pipes, pumps, or cisterns, or any machinery connected with or used in or on the distillery premises, or may require to be put on any of the stills, tubs, cisterns, pipes, or other vessels, such fastenings, locks, or seals as he may deem necessary.

§ 2823

LIQUOR—DISTILLED SPIRITS

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 316.

§ 2824. Exemptions of small distilleries from certain requirements

(a) Power of Commissioner. The Commissioner, with the approval of the Secretary, may exempt distillers whose distilleries have a daily spirit producing capacity of thirty gallons of proof spirits, or less, from such of the provisions of law in regard to grain distilleries which require the processes of distillation to be carried on through continuous closed vessels and pipes, or which require the cisterns to be connected with the outlet of the worm or condenser by suitable pipes or other apparatus or which require certain clear spaces about the cisterns and other vessels of the distillery, or which require the distillers to have or furnish a plan of the distillery, as he may deem proper.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 316.

§ 2825. Exemption of distillers of fruit brandy from certain requirements

The Commissioner, with the approval of the Secretary, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, papayas, cantaloups, persimmons, prunes, figs, cherries, dates, or citrus fruits (except lemons and limes) from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided*, That where, in the manufacture of wine or citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wine, papaya wine, pineapple wine, cantaloup wine, or apple wine, artificial sweetening has been used, the wine, or the fruit pomace residuum thereof, or the citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wine, papaya wine, pineapple wine, cantaloup wine, or apple wine, may be used in the distillation of brandy or citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy, as the case may be, and such use shall not prevent the Commissioner, with the approval of the Secretary, from exempting such distiller from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *And provided further*, That the distillers mentioned in this section may add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material. 53 Stat. 316, amended Apr. 20, 1942, c. 244, § 1(f), 56 Stat. 219.

Historical Note

1942 Amendment. Act April 20, 1942, inserted "papayas, cantaloups," where first appearing, and inserted other matter relating to pawpaw, papaya, pineapple, and cantaloup wines and brandies.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 2826. Keeping distillery accessible

(a) **Requirements.** No fence or wall of a height greater than five feet shall be erected or maintained around the premises of any distillery, so as to prevent easy and immediate access to such distillery, but the Secretary may authorize the construction and maintenance of a fence or wall of such greater height than five feet as he shall prescribe in any case in which in his opinion such higher fence or wall is necessary to give adequate protection from trespassers. And every distiller shall furnish to the collector of the district as many keys of the gates and doors of the distillery as may be required by the collector, from time to time, for any revenue officer or other person who may be authorized to make survey or inspection of the premises, or of the contents thereof; and said distillery shall be kept always accessible to any officer or other person having any such key. Every person who violates any of the provisions of this subsection by negligence or refusal, or otherwise, shall pay a penalty of \$500.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 316.

§ 2827. Entry and examination of distillery

(a) **Power of revenue officers.** It shall be lawful for any revenue officer at all times, as well by night as by day, to enter into any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and to examine, gauge, measure, and take an account of every still or other vessel or utensil of any kind, and of all low-wines, and of the quantity and gravity of all mash, wort, or beer, and of all yeast, or other compositions for exciting or producing fermentation in any mash or beer, of all spirits and of all materials for making or distilling spirits, which may be in any such distillery or premises, or in possession of the distiller.

And whenever any internal revenue officer, or any person called by him to his aid, is hindered, obstructed, or prevented by any distiller or by any workman, or other person acting for such distiller, or in his employ, from entering into any such distillery or building or place as aforesaid; or any such officer is by the distiller, or his workman, or any person in his employ, prevented or hindered from, or opposed, or obstructed, or molested in the performance of his duty under the internal revenue laws, in any respect, the distiller shall forfeit the sum of not exceeding \$1,000.

And whenever any officer, having demanded admittance into a distillery or distillery premises, and having declared his name and office, is not admitted into such distillery or premises by the distiller or other person having charge thereof, it shall be lawful for such officer at all times, as well by night as by day, to break open by force any of the doors or windows, or to break through any of the walls of such distillery or premises necessary to be broken open or through, to enable him to enter the said distillery or premises; and the distiller shall forfeit the sum of not exceeding \$1,000.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 317.

§ 2828. Distillers and rectifiers to furnish facilities and give assistance for examination of premises

(a) **Power of revenue officers.** On the demand of any internal revenue officer or agent, every distiller or rectifier shall furnish strong, safe, and convenient ladders of sufficient length to enable the officer or agent to examine and gauge any vessel or utensil in such distillery or premises;

and shall, at all times when required, supply all assistance, lights, ladders, tools, staging, or other things necessary for inspecting the premises, stock, tools, and apparatus belonging to such person, and shall open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the revenue officer in charge, under a penalty of \$500 for every refusal or neglect so to do.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 317.

§ 2829. Installation of meters, tanks, and other apparatus

(a) Power of the Commissioner. The Commissioner, with the approval of the Secretary, is authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Commissioner shall not be permitted to conduct business on such premises.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 318.

§ 2830. Officer's authority to break up grounds or walls

(a) Power of revenue agent. It shall be lawful for any revenue officer, and any person acting in his aid, to break up the ground on any part of a distillery, or premises of a distiller or rectifier, or any ground adjoining or near to such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any mash, wort, or beer, or other liquor, which may be used for the distillation of low-wines or spirits, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 318.

§ 2831. Signs of distillers, rectifiers, and wholesale liquor dealers

Every person engaged in distilling or rectifying spirits, and every wholesale liquor dealer, shall place and keep conspicuously on the outside of the place of such business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in oil colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, rectifier, or wholesale dealer, with the words: "Registered distillery," "rectifier of spirits," or "wholesale liquor dealer," as the case may be. Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of \$500.

And every person, other than a rectifier or wholesale liquor dealer who has paid the special tax, or a distiller who has given bond as required by law, who puts up or keeps up the sign required by this section, or any sign indicating that he may lawfully carry on the business of a

distiller, rectifier, or wholesale liquor dealer, shall forfeit and pay \$1,000, and shall be imprisoned not less than one month nor more than six months. And every person who works in any distillery, rectifying establishment, or wholesale liquor store, on which no sign is placed and kept, as hereinbefore provided; and every person who knowingly receives at, carries or conveys any distilled spirits to or from, any such distillery, rectifying establishment, warehouse, or store, or who knowingly carries and delivers any grain, molasses, or other raw material to any distillery on which such sign is not placed and kept, shall forfeit all horses, carts, drays, wagons, or other vehicle or animal used in carrying or conveying such property aforesaid, and shall be fined not less than \$100 nor more than \$1,000, or be imprisoned not less than one month nor more than six months. 53 Stat. 318.

§ 2832. Conditions precedent to carrying on business of distilling

It shall not be lawful for any distiller to commence the business of distilling, until he has given the bond required by law, and complied with the provisions of law relating to the registration and survey of distilleries, and the arrangement and construction of distilleries and the premises connected therewith; nor shall it be lawful for any person to engage in the business of distilling on any premises distant less than six hundred feet in a direct line from any premises used for rectifying; nor shall the processes of distillation and rectification both be carried on within the distance of six hundred feet in a direct line; except that the Secretary is authorized to permit such business of distilling or process of distillation to be carried on at such lesser distance than six hundred feet as he prescribes, in any case in which he deems that such permission may be granted without danger to the revenue. 53 Stat. 319.

§ 2833. Distilling without giving bond

(a) **Penalty and forfeiture.** Any person who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than \$100 nor more than \$5,000 and imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 319.

§ 2834. Mash, wort, and vinegar; vinegar factories

No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and (except in the case of vinegar) the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years. Nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted, except as provided in section 2835, within six hundred feet of any distillery or rectifying house. But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.

No person, however, shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than 2 per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

And sections 2827, 2828, and 2830 shall apply to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them. 53 Stat. 319.

§ 2835. Vinegar factories operated prior to March 1, 1879

(a) **Regulations.** Any vinegar factory for the manufacture of vinegar, established and operated as a vinegar factory prior to March 1, 1879, may be operated for the manufacture of vinegar by the use of alcoholic vapor within such distance less than six hundred feet of any distillery or rectifying house under such regulations as the Commissioner may prescribe with the approval of the Secretary.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 320.

§ 2836. Prohibited hours for distilling

Except as provided in section 2837, no malt, corn, grain, or other material shall be mashed, nor any mash, wort, or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of \$1,000. 53 Stat. 320.

§ 2837. Exemption of alcohol from restrictions of section 2836

(a) **Power of Commissioner.** Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the manufacture, warehousing, withdrawal, and shipment of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section 2836.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 320.

§ 2838. Penalty for using material or removing spirits in absence of storekeeper-gauger

Every distiller or person employed in any distillery who, in the absence of the storekeeper-gauger, or person designated to act as storekeeper-gauger, uses, or causes or permits to be used, any material for the purpose of making mash, wort, or beer, or for the production of spirits, or removes any spirits, shall forfeit and pay double the amount of taxes on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of \$1,000. 53 Stat. 320.

§ 2839. Drawing off water and cleansing worm tubs

(a) **Requirements.** Whenever any officer or internal revenue agent requires the water contained in any worm tub in a distillery, at any time when the still is not at work, to be drawn off, and the tub and worm cleansed, the water shall forthwith be drawn off, and the tub and worm cleansed by the distiller, or his workmen, accordingly; and the water shall be kept and continued out of such worm tub for the period of two hours, or until the officer or agent has finished his examination thereof. For any refusal or neglect to comply with any provision of this section, the distiller shall forfeit the sum of not exceeding \$1,000; and it shall be lawful for the officer or agent to draw off such water, or any portion of it, and to keep the same drawn off for so long a time as he shall think necessary.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 321.

§ 2840. Fermenting tubs

(a) **Requirements.** Every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in seventy-two hours, nor in a sour-mash distillery oftener than once in ninety-six hours, nor in a rum distillery oftener than once in one hundred and forty-four hours, nor in a distillery where the filtration-aeration process is employed, that is, where the mash after it leaves the mash tub is passed through a filtering machine, before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, and the approval of the Commissioner being secured, oftener than once in twenty-four hours. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

(b) Cross references**(1) Exemption of ethyl alcohol distillers**

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2845.

(2) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 321.

§ 2841. Distiller's books

(a) Entries

(1) Requirements. Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall keep a record, in the form and manner prescribed by the Commissioner, of the receipt on the distillery premises, and the use thereon, of materials intended for use in the distillation of spirits, and of the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

(2) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170

(b) Preservation and inspection. The books of every distiller hereinbefore required shall always be kept at the distillery and be always open to the inspection of any revenue officer, and, when filled up, shall be preserved by the distiller for a period of not less than two years thereafter, and whenever required shall be produced for the inspection of any revenue officer.

(c) Penalty and forfeiture

(1) Omitting entries or making false entries. Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding subsections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or willfully fails to produce such books, or either of them, shall be fined not less than \$500, nor more than \$5,000, and imprisoned not less than six months, nor more than two years.

(2) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 321.

§ 2842. Penalty for using false weights and measures

Every person who knowingly uses any false weights or measures in ascertaining, weighing, or measuring the quantities of grain, meal, or vegetable materials, molasses, beer, or other substances to be used for distillation, shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than one year nor more than three years. 53 Stat. 322.

§ 2843. Penalty for using unregistered materials

Any person who uses any molasses, beer, or other substance, whether fermented on the premises or elsewhere, for the purpose of producing spirits, before an account of the same is registered in the proper book

provided for that purpose, shall forfeit and pay the sum of \$1,000 for each offense so committed. 53 Stat. 322.

§ 2844. Monthly production return of distiller

(a) **Requirement.** On the 1st day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of proof gallons of spirits produced and placed in warehouse. And the distiller or the principal manager of the distillery shall make and subscribe the following oath, to be attached to said return:

"1, _____, distiller (or principal manager, as the case may be) of the distillery at _____, do solemnly swear that, since the date of the last return of the business of said distillery, dated _____ day of _____ to _____ day of _____, both inclusive, there was produced in said distillery, and withdrawn and placed in warehouse, the number of proof gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more."

One of the said duplicate returns shall be transmitted by the collector to the Commissioner.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 322, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which struck out "of wine gallons and" and "wine gallons and".

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or

more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 2845. Special returns of number of barrels distilled

(a) **Requirement.** Every distiller shall make a return of the number of barrels of spirits distilled by him, counting forty gallons of proof spirits to the barrel, whenever such return is demanded by the collector of the district.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 323.

§ 2846. Assessment for deficiencies in production and excess of material used

(a) **Power of Commissioner.** On the receipt of the distiller's return in each month, the Commissioner shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be less than 80 per centum of the producing capacity of the distillery as estimated according to law, he shall make an assessment for such deficiency at the rate of tax imposed by law for every proof gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment

against the distiller at the rate imposed by law for every proof gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds 80 per centum of the producing capacity of the distillery. If the Commissioner finds that the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon: *Provided*, That the actual product shall be assumed to be in no case less than 80 per centum of the producing capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon, from the time such assessment is made until the same shall have been paid.

(b) Cross references

(1) Exemption of ethyl alcohol distillers

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2848

(2) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 323.

§ 2847. Relief from assessments under section 2846

(a) Power of Commissioner. Whenever, under the provisions of section 2846, an assessment shall have been made against a distiller for a deficiency in not producing 80 per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner, subject to regulations prescribed by the Secretary is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises.

And the Commissioner upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing 80 per centum of the producing capacity of his distillery as established by law when the deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed:

Provided, That no assessment shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 323.

§ 2848. Exemption of distillers of ethyl alcohol from certain provisions

(a) **Power of Commissioner.** The Commissioner, with the approval of the Secretary, may by regulations exempt distillers of ethyl alcohol, for use in the production of munitions of war, or for other nonbeverage purposes, from so much of the provisions of sections 2817, 2840, or 2846, respecting the survey of distilleries, the period of fermentation, the filling and emptying of fermenting tubs, and assessments, as, in his judgment, may be expedient: *Provided*, That the bond prescribed in section 2814 shall, in the cases herein provided, be in such sum and contain such further conditions as the Commissioner may require.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 324.

§ 2849. First fermenting period

The first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved; and every distiller at the hour of twelve meridian on the last day of such first fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced, and thereafter to be continuously engaged in, the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as provided in section 2850. 53 Stat. 324.

§ 2850. Suspension and resumption of distilling

(a) **Requirements.** Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice said collector or one of his deputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner may prescribe to prevent the lighting of any fire in such furnace or under such stills or boilers. The locks and seals, and other materials required for such purpose, shall be furnished to the collector by the Commissioner, to be duly accounted for by said collector. Such notice by any distiller, and the action taken by the collector in pursuance thereof, shall be immediately transmitted to the Commissioner. No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector or one of his deputies shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner.

Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law.

But nothing in this section shall be held to apply to suspensions caused by unavoidable accident; and the Commissioner shall prescribe regulations to govern such cases of involuntary suspension.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 324.

§ 2851. Reduction of producing capacity of distillery

(a) Requirements. Whenever any distiller desires to reduce the producing capacity of his distillery, he shall give notice of such intention, in writing, to the collector, stating the quantity of spirits which he desires thereafter to manufacture or produce every twenty-four hours, and thereupon said collector shall proceed, at the expense of the distiller, to reduce and limit the producing capacity of the distillery to the quantity stated in said notice, by placing upon a sufficient number of the fermenting tubs close-fitting covers, which shall be securely fastened by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without removing said covers or breaking said seals, and shall adopt such other precautions as may be prescribed by the Commissioner to reduce the capacity of said distillery.

And every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel, which is locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting tub, or other vessel, which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned for not less than one year nor more than three years.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 325.

§ 2852. Release of distillery before judgment

Any distillery or distilling apparatus seized for any violation of law may, in the discretion of the court, be released before final judgment to a receiver appointed by the court to operate such distillery or apparatus. Such receiver shall give bond, which shall be approved in open court, with two or more competent personal sureties, or one approved corporate surety, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court. Funds obtained from such operation shall be impounded as the court shall direct pending such final judgment. 53 Stat. 325.

§ 2853. Destruction of distilling apparatus in forfeiture proceedings

(a) Procedure. When a judgment of forfeiture, in any case of seizure, is recovered against any distillery used or fit for use in the production of distilled spirits, because no bond has been given, or against any distillery used or fit for use in the production of spirits, having a registered producing capacity of less than one hundred and fifty gallons a day, for any violation of law, of whatever nature, every still, doubler, worm, worm tub, mash tub, and fermenting tub therein shall be so destroyed as to prevent the use of the same or of any part thereof for the purpose of distilling; and the materials shall be sold as in case of other forfeited property.

And in case of seizure of a still, doubler, worm, worm tub, mash tub, fermenting tub, or other distilling apparatus, having a less producing ca-

capacity than one hundred and fifty gallons per day, for any offense involving forfeiture of the same, where said apparatus shall be of less than \$500 value, and where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose of distilling. Such destruction shall be in the presence of at least one credible witness, and such witness shall unite with the said officer in a duly sworn report of said seizure and destruction, to be made to the Commissioner, in which report they shall set forth the grounds of the claim of forfeiture, the reasons for such seizure and destruction, their estimate of the fair cash value of the apparatus destroyed, and also of the materials remaining after such destruction, and a statement that, from facts within their own knowledge, they have no doubt whatever that said distilling apparatus was set up for use and not registered, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove the same to a place of safe storage.

Within one year after such destruction the owner of the apparatus so destroyed may make application to the Secretary through the Commissioner, for reimbursement of the value of the same; and unless it shall be made to appear to the satisfaction of the Secretary and the Commissioner that said apparatus had been used in the unlawful distillation of spirits, the Secretary shall make an allowance to said owner, not exceeding the value of said apparatus, less the value of said materials as estimated in said report; and if the claimant shall thereupon satisfy said Secretary and Commissioner that said unlawful use of the apparatus had been without his consent or knowledge, he shall still be entitled to such compensation, but not otherwise. And in case of a wrongful seizure and destruction of property under the foregoing provisions, the owner thereof shall have right of action on the official bond of the officer who occasioned the destruction for all damages caused thereby.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 326.

§ 2854. Burden of proof in cases of seizure of spirits

Whenever seizure is made of any distilled spirits found elsewhere than in a distillery or distillery warehouse, or other warehouse for distilled spirits authorized by law, or than in the store or place of business of a rectifier, or of a wholesale liquor dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law to be made in the books of the owner of such spirits, or of the storekeeper-gauger, wholesale dealer, or rectifier, have not been made at the time or in the manner required, or in respect to which the owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with. 53 Stat. 326.

§ 2855. Monthly returns of rectifiers

(a) Requirement. On or before the 10th day of each month every person engaged in rectifying or compounding distilled spirits shall make, in such form as may be prescribed by the Commissioner, a return to the collector of the district, showing the quantity of spirits received for rectification, and from whom received, the quantity dumped for rectification,

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the quantity rectified, the quantity removed after rectification during the preceeding¹ month, and giving such other information as may be required by the Commissioner, such return to be made in duplicate and sworn to by the rectifier; and the collector shall forward one of such returns to the Commissioner.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 327.

¹ Probably should read "preceding."

§ 2856. Penalty for unlawful rectifying

Every person who engages in, or carries on, the business of a rectifier with intent to defraud the United States of the tax on the spirits rectified by him, or any part thereof, or with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits, or who shall purchase or receive or rectify any distilled spirits which have been removed from a distillery to a place other than the distillery warehouse provided by law, knowing or having reasonable grounds to believe that the tax on said spirits, required by law, has not been paid, shall, for every such offense, be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than two years. 53 Stat. 327.

§ 2857. Books of rectifiers and wholesale dealers

(a) **Requirements.** Every rectifier and every wholesale liquor dealer who sells, or offers for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time shall keep daily, at his place of business covered by his special tax stamp, a record of distilled spirits received and disposed of by him, and shall render under oath correct transcripts and summaries of such records: *Provided*, That the Commissioner may in his discretion require such record to be kept at the place where the spirits are actually received and sent out. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

Every rectifier and wholesale liquor dealer who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

Every rectifier and wholesale liquor dealer who refuses or neglects to render transcripts or summaries in the form required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 327, amended Aug. 7, 1939, c. 561, 53 Stat. 1260.

Historical Note

1939 Amendment. Subsec. (a), first par., amended by Act Aug. 7, 1939. amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

§ 2858. Exemption of States from provisions of section 2857

The provisions of section 2857 shall not apply to States and Commonwealths and liquor stores operated by such States and Commonwealths that maintain and make available to inspection by internal-revenue officers such records as will enable such officers to readily trace all distilled spirits received and disposed of by them: *Provided*, That such States and Commonwealths, and the liquor stores operated by them, shall, upon the request of the Commissioner, furnish to the Commissioner such transcripts, summaries, and copies of their records as he shall require. 53 Stat. 328.

§ 2859. Books of distillers as wholesale dealers

(a) **Requirement.** Every distiller shall keep daily a record of distilled spirits of his own production disposed of by him, and shall render under oath correct transcripts and summaries of such records. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall at all times be available, during business hours, for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

Every distiller who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

Every distiller who refuses or neglects to render the transcripts or summaries in the form as required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 328.

§ 2860. Limitation on purchases by rectifiers and dealers

It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor dealer, to purchase or receive any distilled spirits in quantities greater than twenty gallons from any person other than an authorized rectifier of distilled spirits, distiller, or wholesale liquor dealer. Every person who violates this section shall forfeit and pay \$1,000: *Provided*, That this provision shall not be held to apply to judicial sales, or to sales at public auction made by an auctioneer, or to sales upon which no special tax accrues as enumerated and provided for in section 3251. This section shall not be held to prohibit a rectifier or liquor dealer from

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purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as provided in section 3251(c). 53 Stat. 328.

§ 2861. Gauging, branding, and stamping rectified spirits

(a) **Requirement.** Whenever any cask or package of distilled spirits containing five wine gallons or more is dumped by a rectifier for rectification or filled and received from rectification for sale, shipment, or delivery the same shall be gauged, marked, branded and stamped by a storekeeper-gauger, whose duty it shall be to mark and brand the same and place thereon a stamp, which shall state the date when affixed and the number of proof gallons, and shall be in such form as shall be prescribed by the Commissioner with the approval of the Secretary; but the Commissioner may by regulations, approved by the Secretary, provide that the gauging, marking, stamping and branding of such packages so dumped for rectification, or received therefrom, be done by the rectifier instead of by a storekeeper-gauger.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 329, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which substituted "a" for "an engraved" preceding "stamp".

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21,

1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

§ 2862. Stamping

(a) **Requirements.** All blanks in any of the forms prescribed in section 2861 shall be duly filled in accordance with the facts in each case. And the stamps therein designated shall in every case be affixed to a smooth surface of the cask or other package, which surface shall not have been previously painted or covered with any substance, and so as to fasten the same securely to the cask or package, and shall be duly canceled, and shall then be immediately covered with a coating of transparent varnish or other substance, so as to protect them from removal or damage by exposure; and such affixing, cancellation, and covering shall be done in such manner as the Commissioner may by regulation prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 329.

§ 2863. Marking and stamping packages filled on premises of wholesale dealers

(a) **Requirements.** Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 329.

§ 2864. Returns of wholesale dealers

For requirements as to rendering under oath correct transcripts and summaries of records in the case of wholesale liquor dealers, see section 2857(a). 53 Stat. 329.

§ 2865. Noncompliance by rectifiers and wholesale dealers with certain provisions, penalties

(a) **Imposition.** Every rectifier or wholesale liquor dealer who refuses or willfully neglects to comply with the requirements of sections 2813, 2861, and 2863 as to giving the said notice or the said return, and as to marking, branding, and stamping, in accordance with the law and the regulations made in pursuance thereof, the packages of spirits filled on his premises as aforesaid, shall, for each such offense, be fined not less than \$200 nor more than \$1,000.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 329.

§ 2866. Effacement of stamps and brands on emptied packages

Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp, required by law, shall at the time of emptying such cask or package, efface and obliterate said mark, stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated as herein required, shall be forfeited to the United States, and may be seized by any officer of internal revenue, wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package containing distilled spirits, shall forfeit \$300 for each such cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad car, cart, dray, wagon, or other vehicle, and all horses and other animals used in carrying or transporting the same, shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any canceled stamp, or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than \$500 nor more than \$10,000, and imprisoned not less than one year nor more than five years. 53 Stat. 330.

§ 2867. Buying or selling used casks bearing inspection marks

Whenever any person knowingly purchases or sells, with inspection marks thereon, any cask or package, after the same has been used for distilled spirits, he shall forfeit and pay the sum of \$200 for every such cask so purchased or sold. 53 Stat. 330.

§ 2868. Changing stamps or shifting spirits

Whenever any person changes or alters any stamp, mark, or brand on any cask or package containing distilled spirits, or puts into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently uses any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected

therein, he shall forfeit and pay the sum of \$200 for every cask or package on which the stamp or mark is so changed or altered, or which is so fraudulently used, and shall be fined for each such offense not less than \$100 nor more than \$1,000, and imprisoned not less than one month nor more than one year. 53 Stat. 330.

§ 2869. Affixing imitation stamps on packages of distilled spirits

If any person shall affix, or cause to be affixed, to or upon any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits, he shall, for each offense, be liable to a penalty of \$100, and, on conviction, shall be fined not more than \$1,000, and imprisoned not more than three years, and the cask or package with its contents shall be forfeited to the United States. 53 Stat. 330.

§ 2870. Prohibited hours for removal of spirits

No person shall remove any distilled spirits at any other time than after sun-rising and before sun-setting in any cask or package containing more than ten gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored; and every person who violates this provision shall be liable to a penalty of \$100 for each cask, barrel, or package of spirits so removed; and said spirits, together with any vessel containing the same, and any horse, cart, boat, or other conveyance used in the removal thereof, shall be forfeited to the United States. 53 Stat. 331.

§ 2871. Regulation of traffic in containers of distilled spirits

Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him, and permits issued thereunder if required by him (1) to regulate the size, branding, marking, sale, resale, possession, use, and re-use of containers (of a capacity of less than five wine-gallons) designed or intended for use for the sale at retail of distilled spirits (within the meaning of such term as it is used in section 2803) for other than industrial use, and (2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith. Whoever willfully violates the provisions of any regulation prescribed, or the terms or conditions of any permit issued, pursuant to the authorization contained in this section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be fined not more than \$1,000 or be imprisoned for not more than two years, or both; and, notwithstanding any criminal conviction, the containers involved in such violation shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for forfeitures, seizures, and condemnations for violations of the internal-revenue laws, and any such containers so seized and condemned shall be destroyed and not sold. Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law, and shall apply as well to persons not liable for tax under the internal-revenue laws as to persons so liable. 53 Stat. 331.

PART III.—INTERNAL REVENUE BONDED WAREHOUSES

§ 2872. Establishment and control

The Commissioner is authorized, in his discretion, and upon the execution of such bonds as he may prescribe, to establish warehouses, to be known and designated as internal revenue bonded warehouses, to be used exclusively for the storage of spirits distilled at a registered distillery, each of which warehouses shall be in charge of a storekeeper-gauger. Every such warehouse shall be under the control of the District Supervisor of the Alcohol Tax Unit district in which such warehouse is located, and shall be in the joint custody of the storekeeper-gauger and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper-gauger or other person who may be designated to act for him. No dwelling house shall be used for such a warehouse, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into a distillery. Such warehouses shall be under such further regulations as the Commissioner, with the approval of the Secretary, may prescribe. 53 Stat. 331.

§ 2873. Regulations for establishment, maintenance, and supervision.

The establishment, construction, maintenance, and supervision of internal revenue bonded warehouses shall be under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 332.

§ 2874. Discontinuance of warehouse and transfer of merchandise

(a) **Authorization.** Whenever, in the opinion of the Commissioner, any internal revenue bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 332.

§ 2875. Exemption from provisions of law distinguishing between classes of warehouses

Internal revenue bonded warehouses established under authority of law shall be exempt from the provisions of those sections of law which, prior to June 26, 1936, have made distinctions between distillery bonded warehouses, general bonded warehouses, and special bonded warehouses, as to (1) kind of spirits to be stored therein; (2) ownership or production of distilled spirits to be stored therein; (3) ownership or proprietorship of such warehouses; (4) location and construction of such bonded warehouses; (5) entry of distilled spirits therein; (6) withdrawal of distilled spirits therefrom; (7) transfers of distilled spirits to or from.

one or more of such classes of bonded warehouses; or (8) any other matter; it being hereby declared to be the purpose to establish the internal revenue bonded warehouse as the sole type and kind of bonded warehouse under the internal revenue laws for the storage of spirits distilled at a registered distillery on which the tax has not been paid. 53 Stat. 332.

§ 2876. Failure to comply with warehousing and removal requirements

In case any distilled spirits removed from an internal revenue bonded warehouse for deposit in another internal revenue bonded warehouse shall fail to be so deposited or if any distilled spirits deposited in any internal revenue bonded warehouse shall be taken therefrom, for export or otherwise, without full compliance with the provisions of this part, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, or if any distilled spirits which have been deposited in an internal revenue bonded warehouse shall be found elsewhere, not having been removed therefrom according to law, any person who shall be guilty of such failure, or any person who shall in any manner violate any provision of this part shall be subject, on conviction, to a fine of not less than \$100 nor more than \$5,000, or to imprisonment for not less than three months nor more than three years for every such failure or violation; and the spirits as to which such failure or violation, or unlawful removal shall take place shall be forfeited to the United States. 53 Stat. 332.

§ 2877. Storekeeper-gauger's records

(a) Requirement. The storekeeper-gauger assigned to any distillery shall, in addition to all other duties required to be performed by him, keep such records and submit such reports as the Commissioner, with the approval of the Secretary, shall, by regulations, prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 333, amended Feb. 21, 1950, c. 36, § 2, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, to broaden its provisions by requiring the storekeeper-gauger to keep such reports as the Commissioner, with the approval of the Secretary, shall prescribe.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or

more after Feb. 21, 1950, see note set out under section 2300 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 20—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S. Code Cong. Service, p. 1931.

§ 2878. Drawing, gauging, and marking of distilled spirits

(a) General rule. Except as provided in section 2883, all distilled spirits shall be drawn from receiving cisterns into casks or packages and thereupon shall be gauged, proved, and marked by a storekeeper-gauger, and immediately removed into an internal revenue bonded warehouse. The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, gauging, and packaging of distilled spirits; the marking, branding, numbering, and stamping of such packages; and the transfer and transportation to, and the storage of such spirits in, internal revenue bonded warehouses.

(b) In wooden packages containing metallic cans for export. Upon the application of the distiller and under such regulations as the Com-

missioner, with the approval of the Secretary, may prescribe, distilled spirits may be drawn into wooden packages, each containing two or more metallic cans, which cans shall each have a capacity of not less than five gallons, wine measure. Such packages shall be filled and used only for exportation from the United States. And there shall be charged for each of said packages or cases for the expense of providing and affixing stamps, 5 cents.

(c) **Standards of fill.** The Commissioner, with the approval of the Secretary, may, by regulations, prescribe the standards of fill of casks or packages of distilled spirits at each distillery.

(d) **Marking and branding by distiller.** The Commissioner, with the approval of the Secretary, may, by regulations, from time to time, require a distiller, at his expense and under the immediate personal supervision of a storekeeper-gauger, to do such marking and branding and such mechanical labor pertaining to gauging required under this section as the Commissioner deems proper and determines may be done without danger to the revenue.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 333.

§ 2879. Deposits of spirits in warehouses

(a) **Entry for deposit.** The distillers of all spirits removed to an internal revenue bonded warehouse shall enter the same for deposit in such warehouse, under such regulations as the Commissioner may prescribe. Said entry shall be in such form as the Commissioner shall prescribe.

(b) **Time for payment of the tax.** The tax on all distilled spirits hereafter entered for deposit in internal revenue bonded warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within eight years from the date of the original entry for deposit therein; and warehousing bonds hereafter taken under the provisions of the internal revenue laws shall be conditioned for the payment of the tax on the spirits as specified in the entry before withdrawal from the internal revenue bonded warehouse, and within eight years from the date of said entry.

(c) **Bond required.** The Commissioner shall prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses and in transit to and between such warehouses: *Provided*, That the penal sums of such bonds covering distilled spirits shall not exceed in the aggregate \$200,000 for each such warehouse.

(d) **Renewal of bond.** A new bond shall be required in case of the death, insolvency, or removal of the surety or sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner. And in case the warehouseman falls or refuses to give the bond required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the storekeeper-gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding proved by law.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 333.

§ 2880. Withdrawal from warehouse and collection of tax on spirits subject to excessive leakage

(a) **Power of the Commissioner.** If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package deposited in an internal revenue bonded warehouse, other than the loss provided for in section 2901(b), which, in the opinion of the Commissioner, is excessive, he may instruct the District Supervisor of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and direct the collector to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 334.

§ 2881. Withdrawal of spirits from warehouse on original gauge

(a) **Regulations.** Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, packages of distilled spirits drawn from receiving cisterns and deposited in internal revenue bonded warehouses may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 334.

§ 2882. Entry for withdrawal from warehouse

(a) **Authorization.** Any distilled spirits may, on payment of the tax thereon, be withdrawn from warehouse on application to the collector of the district in charge of such warehouse, on making a withdrawal entry in duplicate and in the following form:

**ENTRY FOR WITHDRAWAL OF DISTILLED SPIRITS FROM
WAREHOUSE TAX PAID**

Entry of distilled spirits to be withdrawn, on payment of the tax, from internal revenue bonded warehouse number _____, situated in the _____ district of _____, by _____, deposited on the _____ day of _____, anno Domini _____, by _____, in said warehouse.

And the entry shall specify the whole number of casks or packages, with the marks and serial numbers thereon, the number of proof gallons and taxable gallons, and the amount of the tax on the distilled spirits contained in them at the time they were deposited in the internal revenue bonded warehouse; and said entry shall also specify the number of proof gallons, and taxable gallons contained in said casks or packages at the time application shall be made for the withdrawal thereof; and on payment of the tax the collector shall issue his order to the storekeeper-gauger in charge of the warehouse for the delivery. One of said entries shall be filed in the office of the collector, and the other transmitted by him to the Commissioner.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 335, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which struck out "of gauge or wine gallons, and" wherever appearing.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see Volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S.Code Cong.Service, p. 1931.

§ 2883. Transfer of spirits at registered distilleries

(a) **Requirements.** Subject to the provisions of existing law, spirits of one hundred and sixty degrees of proof or more produced at registered distilleries, including registered fruit distilleries (such registered distilleries and registered fruit distilleries being referred to hereafter as "distillery" or "distilleries"), may be transferred by means of pipe lines from receiving cisterns in the distillery direct to storage tanks in the internal revenue bonded warehouse located on the bonded premises where produced or located contiguous thereto, and be warehoused in such storage tanks, or they may be withdrawn from the receiving cisterns, without, or after reduction in proof, into approved containers and transferred to any internal revenue bonded warehouse for storage therein, or they may be tax-paid in such approved containers in the cistern rooms of distilleries without being entered into an internal revenue bonded warehouse. Such spirits may be drawn into approved containers from storage tanks in an internal revenue bonded warehouse. Spirits of one hundred and sixty degrees of proof, or more, may be transferred in bond in tank cars from cistern rooms of distilleries or from storage tanks in an internal revenue bonded warehouse and be deposited in storage tanks in any internal revenue bonded warehouse. Such spirits in tanks in internal revenue bonded warehouses distilled at or above one hundred and ninety degrees of proof may be reduced to not less than one hundred and eleven degrees prior to being drawn into packages. Such spirits, upon tax payment, may be withdrawn in approved containers, including pipe lines to contiguous premises, for use for beverage purposes only. Except as provided in subsection (c) hereof and section 2916, such spirits may not be withdrawn for denaturation.

(b) **Transfer of fortifying spirits.** Fortifying spirits of one hundred and sixty degrees of proof or more may be transferred by pipe line from registered fruit distilleries and receiving cisterns in such distilleries to the fortification rooms of contiguous wineries or to storage tanks in the internal revenue bonded warehouse located on the distillery premises where the spirits were produced. Fortifying spirits of one hundred and sixty degrees of proof or more may also be transferred by pipe line from storage tanks in any internal revenue bonded warehouse to the fortification rooms of contiguous wineries.

(c) **Transfer of rum for denaturation.** Rum of not less than one hundred and fifty degrees of proof may be transferred by pipe line for denaturation from receiving cisterns in the cistern room of any distillery to a denaturing bonded warehouse on the distillery premises or to storage tanks situated in the internal revenue bonded warehouse located on the distillery premises, or from such storage tanks to a denaturing bonded warehouse on the distillery premises.

(d) **Transfer of gin and vodka.** Gin and vodka of any proof may be transferred in bond by means of pipe lines from receiving cisterns in distilleries direct to storage tanks in the internal revenue bonded warehouse located on the bonded premises where produced, or located contiguous

thereto, and be warehoused in such storage tanks. Upon tax payment, gin and vodka of any proof may be transferred by pipe line from receiving cisterns in distilleries, or from storage tanks in internal revenue bonded warehouses located on or contiguous to the bonded premises of the producing distillery, to a contiguous tax-paid bottling house or rectifying plant.

(e) **Redistillation of spirits.** Distilled spirits of any proof may be transferred from a distillery or an internal revenue bonded warehouse to any distillery for redistillation upon a showing of the need therefor: *Provided*, That only spirits of one hundred and sixty degrees of proof or more may be transferred by pipe line to a distillery for redistillation from storage tanks in an internal revenue bonded warehouse located on such distillery premises or located contiguous thereto: *Provided further*, That spirits of any proof may be transferred by pipe line for redistillation from receiving tanks in a distillery to a contiguous distillery. Upon removal of distilled spirits to any distillery for redistillation, the consignee distiller shall assume the liability for the payment of the tax on the spirits from the time they leave the internal revenue bonded warehouse or distillery, and the tax liability on the producing distiller or the internal revenue bonded warehouseman, and the liens on the premises of the producing distiller shall cease, and the tax and liens shall become the liability of the consignee distiller: *Provided further*, That upon redistillation the redistilled spirits shall be treated the same as if the spirits had been originally produced by the redistiller and all prior obligations as to taxes and liens shall be superseded. Sections 2800(a) (5) and 3250(f) (1) shall not apply to the redistillation of spirits removed under the provisions of this section.

(f) **Regulations.** The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gaging,¹ storing, redistillation, and transportation of the spirits; the records to be kept and returns to be made; the size and kind of containers to be used; the marking, branding, numbering, and stamping of such containers; and the kind of bond and the penal sum thereof.

(g) **Effect on other laws.** Nothing contained in this section shall be construed as restricting or limiting the provisions of other sections of the internal-revenue laws relating to internal revenue bonded warehouses, distilleries, and bonded wineries.

(h) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

53 Stat. 335, amended Jan. 24, 1942, c. 17, 56 Stat. 17; Mar. 27, 1942, c. 200, 56 Stat. 187; Feb. 21, 1950, c. 36, § 9, 64 Stat. 9; July 3, 1951, c. 208, § 1(a), 65 Stat. 115; July 5, 1951, c. 209, § 1(a), 65 Stat. 115.

¹ So in original.

Historical Note

1951 Amendments. Subsec. (b) amended by Act July 5, 1951, to permit the transfer of fortifying spirits of 100 degrees of proof or more by pipe line from storage tanks in bonded warehouse to the fortification rooms of contiguous wineries.

Subsec. (d) amended by Act July 3, 1951, to make the subsection applicable to vodka as well as gin.

1950 Amendment. Act Feb. 21, 1950, amended section generally to substitute

provisions of a permanent nature for the temporary war provisions.

1942 Amendment. Subsec. (c) added by Act Jan. 24, 1942.

Subsecs. (d) and (e) added by Act Mar. 27, 1942.

Effective Date of 1951 Amendment. Section 1(b) of Act July 5, 1951 provided that the amendment of subsec. (b) of this section by said Act July 5, 1951, should become effective on the 30th day following July 5, 1951.

Section 1(b) of Act July 3, 1951, provided that the amendment of subsec. (d) should be effective on the first day of the first month which begins more than 10 days after July 3, 1951.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act July 3, 1951, see 1951 U S Code Cong. Service, p. 1557. See, also, Act Feb. 21, 1950, 1950 U.S. Code Cong. Service, p. 1931.

§ 2884. Gauging, stamping, and branding spirits removed from warehouse

(a) **Requirement.** Except as may otherwise be required under section 2800(a) (1) (A), whenever an application is received for the removal from any internal revenue bonded warehouse of any cask or package of distilled spirits on which the tax has been paid, the storekeeper-gauger shall gauge and inspect the same, and shall, before such cask or package has left the warehouse, place upon such package such marks, brands, and stamps as the Commissioner, with the approval of the Secretary, shall by regulations prescribe, which marks, brands, and stamps shall be erased when such cask or package is emptied.

The Commissioner, with the approval of the Secretary, may, by regulations, from time to time, require any distiller, at his expense and under the immediate personal supervision of a storekeeper-gauger, to do such marking and branding and such mechanical labor pertaining to gauging required under this section as the Commissioner deems proper and determines may be done without danger to the revenue.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 336, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which substituted "Except as may * * * whenever" in lieu of "Whenever".

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S. Code Cong. Service, p. 1931.

§ 2885. Exportation of spirits withdrawn from warehouses

(a) **Entries, bonds, and bills of lading.** Distilled spirits may be withdrawn from internal revenue bonded warehouses, at the instance of the owner of the spirits, for exportation in the original casks or packages, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner, with the approval of the Secretary, and bonds given under this section shall be canceled under such regulations as the Secretary shall prescribe. The bonds required to be given for the exportation of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading, or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof.

(b) **Marks, stamps, and permits.** All distilled spirits intended for export, as aforesaid, before being removed from the internal revenue bonded warehouse, shall be marked as the Commissioner may prescribe, and shall have affixed to each cask an engraved stamp indicative of such intention, to be provided and furnished by the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner, and for the expense attending the providing and affixing such stamps 10 cents for each package so stamped shall be paid to the collector on making the entry for such transportation. When the owner of the spirits shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal and transportation of said spirits to the collector of the port from which the same are to be exported, accurately describing the spirits to be shipped, the amount of tax thereon, the State and district from which the same is to be shipped, the name of the distiller by whom distilled, the port to which the same are to be transported, the name of the collector of the port to whom the spirits are to be consigned, and the routes over which they are to be sent to the port of shipment. Such shipments shall be made over bonded routes whenever practicable. The collector of the port shall receive such spirits, and permit the exportation thereof, under the same rules and regulations as are prescribed for the exportation of spirits upon which the tax has been paid.

(c) **Metallic cans in wooden packages**

For authority of distiller to draw distilled spirits into wooden packages, each containing two or more metallic cans, for exportation only, see section 2878(b).

(d) **Penalties and forfeitures**

(1) **Fraudulent claim for drawback.** And every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than ten years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not exceeding \$5,000 and imprisoned not more than one year, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

(2) **Unlawful relanding.** Every person who intentionally relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this chapter, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not exceeding \$5,000 and imprisoned not more than three years; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all boats, vehicles, horses, or other animals used in relanding and removing such distilled spirits, shall be forfeited to the United States.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 336.

§ 2886. Transportation bond on withdrawal of spirits for export

(a) **Requirements.** Whenever the owner or owners of distilled spirits shall desire to withdraw the same from any internal revenue bonded warehouse for exportation, such owner or owners may at their option, in lieu of executing an export bond as provided by law, give a transportation bond with sureties satisfactory to the collector of internal revenue and under such rules and regulations as the Secretary may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein, and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified; and in such case, on arrival of the spirits at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, and the name of the vessel upon which the same are to be laden, and the port to which they are intended to be exported. He shall, after the quantity of spirits has been determined by the gauger and inspector, file with the collector of the port an export-entry verified by his oath or affirmation. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the spirits as specified in said entry to the port designated in said entry, or to some other port without the jurisdiction of the United States.

And upon the lading of such spirits, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said spirits were withdrawn for exportation, a clearance certificate and a detailed report of the gauger, which report shall show the capacity of each cask in wine gallons, and the contents thereof in proof gallons, and taxable gallons. Upon receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond. The bond required to be given for the landing at a foreign port of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading or any other port without the jurisdiction of the United States or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof. And whenever a distiller of spirits in bond shall desire to change the packages in which the same is contained, in order to export them, the Commissioner shall be authorized, under regulations to be prescribed by him, and upon the execution of proper bonds with sufficient sureties, to permit the withdrawal of so much spirits from bond and in new packages as the distiller shall desire to export as aforesaid.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 337, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 3.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which struck out "wine gallons" following "contents thereof in" in second par.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S. Code Cong. Service, p. 1931.

§ 2887. Drawback on spirits

Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, and in distillers' original casks or packages, containing not less than twenty wine gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

EXPORT ENTRY OF DISTILLED SPIRITS ENTITLED
TO DRAWBACK

Entry of spirits distilled by _____, in _____ district, State of _____, to be exported by _____, in the _____, whereof _____ is master, bound to _____.

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of proof gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of _____, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A.," and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary may prescribe; and on application of the said collector it shall be the duty of the surveyor of the port to designate and direct one of the customhouse inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary, showing by whom each cask of such spirits was distilled, the serial number of the cask, and of the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said customhouse inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port, indorsed on or to be attached to the entry in possession of the customhouse.

A drawback shall be allowed upon distilled spirits on which the tax has been paid and exported to foreign countries, under the provisions of this section, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, and the rate of drawback shall be equal to the rate of the internal tax paid in respect of the distilled spirits exported, as per last gauge of said spirits prior to exportation, and shall be due and payable only after the

proper entries have been made and filed and all other conditions complied with as hereinbefore required, and on filing with the Secretary the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds. 53 Stat. 338, amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 213(b), 54 Stat. 525; Mar. 17, 1941, c. 21, § 1, 55 Stat. 44, eff. Feb. 11, 1939; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 533(3), 55 Stat. 708; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 602(c), 56 Stat. 971; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 309(a), 58 Stat. 68; Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Act Feb. 21, 1950, amended section by striking out "of gauge or wine gallons" following "the number", and "and wine" following "in proof" both in the second par.

1944 Amendment. Act Feb. 25, 1944, amended section by striking out "but shall not exceed a rate of \$6 per proof-gallon" preceding "as per last gauge" in second sentence of third par.

1942 Amendment. Third par. amended by Act Oct. 21, 1942, which substituted "\$6" for "\$4."

1941 Amendment. Second par. amended by Joint Res. Mar. 17, 1941.

Third par. was amended by Act Sept. 20, 1941, which substituted "but shall not exceed a rate of \$4" for "but shall not exceed a rate of \$3 (or, in the case of brandy, \$2.75)".

1940 Amendment. Third par. amended by Act June 25, 1940, which struck out "but shall not exceed a rate of \$2.25 (or, in the case of brandy, \$2)" and inserted in lieu thereof "but shall not exceed a rate of \$3 (or, in the case of brandy, \$2.75)".

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on the first day of the first month which began more than 10 days after the date of the enactment of this Act, by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendments. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with Oct. 1, 1941, by section 536 thereof.

Section 2 of Joint Res. Mar. 17, 1941 provided that this section as amended by said Joint Res. Mar. 17, 1941 should have effect as if enacted in the Internal Revenue Code on Feb. 10, 1939. Section 3 of Act Feb. 10, 1939, c. 2, 53 Stat. 1 provided that, except as otherwise provided, this title should take effect on Feb. 11, 1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S.Code Cong.Service, p. 1931.

§ 2888. Transfer of spirits into tank cars for export

(a) **Requirement.** Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any internal revenue bonded warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this section.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170, 53 Stat. 339.

§ 2889. Allowance for accidental loss or leakage during transportation from warehouse to port of export

(a) Power of Commissioner. Where spirits are withdrawn from internal revenue bonded warehouses for exportation according to law, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by an unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring¹ during transportation from an internal revenue bonded warehouse to the port of export, nor shall any assessment be collected for such loss or leakage.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 339.

¹ So in original. Probably should read "occurring."

§ 2890. Remission of tax on spirits accidentally lost

Where the spirits provided for in the preceding section are covered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax upon such spirits shall not be remitted to the extent of such excessive insurance. 53 Stat. 340.

§ 2891. Withdrawal of distilled spirits to manufacturing bonded warehouse

(a) Authorization. Under such regulations and requirements as to stamps, bonds, and other security as shall be prescribed by the Commissioner, any manufacturer of medicines, preparations, compositions, perfumeries, cosmetics, cordials, and other liquors, for export, manufacturing the same in a duly constituted manufacturing warehouse, shall be authorized to withdraw, in original packages, from any internal revenue bonded warehouse, so much distilled spirits as he may require for the said purpose, without the payment of the internal revenue tax thereon.

(b) Allowance for loss or leakage. Where spirits are withdrawn from internal revenue bonded warehouses for transfer to manufacturing warehouses, under the provisions of this chapter, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from an internal revenue bonded warehouse to a manufacturing warehouse.

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 340.

PART IV.—MISCELLANEOUS PROVISIONS RELATING TO
DISTILLED SPIRITS

§ 2900. Date of withdrawal

(a) General rule. All distilled spirits entered prior to July 26, 1936, for deposit in a distillery, general, or special bonded warehouse, or after such date entered for deposit in an internal revenue bonded warehouse, shall be withdrawn therefrom within eight years from the date of original entry therein, except as provided in subsection (b) of this section.

(b) Exception. Distilled spirits which on July 26, 1936, are eight years of age, or older, and which are in bonded warehouses, may remain therein after such date; but no allowance for loss by leakage or evapora-

tion shall be made in the case of such spirits with respect to any period after such date: *Provided*, That loss allowances for such spirits for the period prior to July 26, 1936, shall be made pursuant to the provisions of the act of February 6, 1925, c. 143, 43 Stat. 808. 53 Stat. 340.

§ 2901. Loss allowances

(a) Extent. No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(1) Theft. In the case of loss by theft unless the Commissioner shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them; and

(2) Voluntary destruction. In the case of voluntary destruction unless the distilled spirits were unfit for use for beverage purposes and the distiller, warehouseman, or other person responsible for the tax, obtained the written permission of the Commissioner for such destruction in each case.

(b) Proof of loss. In any case in which spirits are lost or destroyed, whether by theft or otherwise, the Commissioner may require the distiller or warehouseman or other person responsible for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the distiller or warehouseman or other person responsible for the tax to establish to the satisfaction of the Commissioner that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them.

(c) Refund of Tax. When, in any case where the tax would not be collectible by virtue of subsection (a), but such tax has been paid, the Commissioner shall refund such tax. Nothing in section 2901 as hereby amended, or as heretofore amended, shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

(d) Insurance coverage. The abatement or refund of taxes provided for by subsections (a) and (c) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss.

(e) Transfer of duties. For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 340, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45; Apr. 8, 1942, c. 226, § 1, 56 Stat. 201; Feb. 21, 1950, c. 36, § 3, 64 Stat. 7.

Historical Note

1950 Amendment. Act Feb. 21, 1950, amended section generally to secure relief from tax on all distilled spirits lost or destroyed in bond without the necessity of filing a claim, and to provide that Commissioner may require the filing of claims and satisfactory proof to establish that the losses to theft, unauthorized deductions, or other questionable causes.

1942 Amendment. Act April 8, 1942, amended section generally.

1941 Amendment. Subsec. (b) amended by Joint Res. Mar. 7, 1941.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or

more after Feb. 21, 1950, see note set out under section 2800 of this title.

Effective Date of 1941 Amendment. Section 2 of Joint Res. Mar. 17, 1941 provided that this section as amended by said Joint Res. Mar. 17, 1941 should have effect as if enacted in the Internal Revenue Code on Feb. 10, 1939. Section 3 of Act Feb. 10, 1939, c. 2, 53 Stat. 1 provided that, except as otherwise provided, this title should take effect on Feb. 11, 1939.

Claims, Amended Section Applicable To. Section 4 of Act Feb. 21, 1950, provided that: "Section 2901, as amended by this Act [Act Feb. 21, 1950] shall apply to any claim for taxes which may accrue after the effective date of this Act.

§ 2901

LIQUOR—DISTILLED SPIRITS

Claims for taxes or tax penalties that accrued on or before the effective date of this Act shall be subject to section 2901 of the Internal Revenue Code as it existed prior to its amendment by this Act."

Section 2 of Act April 8, 1942, provided: "Section 2901(a), (b), (c), and (d), as amended by this Act, shall apply to any claim for taxes which may accrue after the date of enactment of this Act. Claims for taxes or tax penalties that accrued on or before the date of enactment of this Act shall be subject to section 2901 of the Internal Revenue Code as it existed prior to its amendment by this Act. Nothing in section 2901, as hereby amended, shall be construed as in any manner limiting or restricting the provisions of part II, subchapter C, chapter 26, of the Internal Revenue Code."

Packages Filled From Storage Tanks. Act Aug. 4, 1939, c. 427, 53 Stat. 1202, provided "that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to make allowances for losses by leakage and evaporation in accordance with section 2901, Internal Revenue Code, upon withdrawal of packages of brandy or fruit spirits now deposited in internal-revenue bonded warehouses, which were filled from storage tanks in bonded warehouses prior to June 28, 1936."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S.Code Cong.Service, p. 1931.

§ 2902. Other loss allowances

For other loss allowances, see the following—

Spirits destroyed in process of manufacture, section 2847.

Spirits destroyed during transportation from a warehouse to a port of export, section 2889.

Spirits destroyed during transportation from a warehouse to a manufacturing warehouse, section 2891(b).

53 Stat. 342.

§ 2903. Bottling of distilled spirits in bond

(a) **Requirements.** Whenever any distilled spirits deposited in the internal revenue bonded warehouse have been duly entered for withdrawal for bottling in bond before tax-payment or for export in bond, such spirits shall be dumped, gaged, bottled, packed, and cased in the manner which the Commissioner, with the approval of the Secretary, shall by regulations prescribe. The bottling of distilled spirits in bond shall be conducted in a separate portion of such warehouse which shall be set apart and used exclusively for that purpose. For convenience in such process any number of packages of spirits of the same kind, differing only in proof, but produced at the same distillery by the same distiller, may be mingled together in a cistern provided for that purpose, but nothing herein shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as herein authorized. The tax on the distilled spirits bottled in bond shall be paid upon the actual quantity of spirits withdrawn from bond except as otherwise provided in section 2901 of the Internal Revenue Code.

(b) **Stamps for bottles.** Every bottle when filled shall have affixed thereto and passing over the mouth of the same a stamp denoting the quantity of distilled spirits contained therein and evidencing the bottling in bond of such spirits under the provisions of this section and sections 2904 to 2909, inclusive, and of regulations prescribed hereunder.

(c) **Stamp regulations.** The Commissioner, with the approval of the Secretary, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying stamps required by this section, the form and denominations of such stamps, applications for purchase of the stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps, and (b) such other regulations as the Commissioner shall deem

necessary for the enforcement of this section and sections 2904 to 2909, inclusive.

(d) **Stamp supply.** Such stamps shall be issued by the Commissioner to each collector, upon his requisition in such numbers as may be necessary in his district, and, upon compliance with the provisions of this section and sections 2904 to 2909, inclusive, and regulations issued hereunder shall be sold by collectors to persons entitled thereto, at a price of 1 cent for each stamp, except that in the case of stamps for containers of less than one-half pint, the price shall be one-quarter of 1 cent for each stamp.

(e) **Unused stamps; exchange, refund, etc.** The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused case stamp, with all coupon strip stamps attached thereto, issued under section 1 of the Act entitled "An Act to allow the bottling of distilled spirits in bond", approved March 3, 1897 (29 Stat. 626),¹ or under said section 1, as variously amended, and may redeem or make allowance for unused strip stamps issued for bottles of distilled spirits bottled in bond under said section 1, as amended by the Act of July 9, 1937 (50 Stat. 487),² or under subsection (d) of this section, by exchanging them for strip stamps for bottled-in-bond spirits, or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of \$5 or more: *And provided further*, That no claim under this subsection for redemption or allowance in respect of case or strip stamps shall be allowed unless presented within two years after the date on which such case or strip stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

(f) **Marks, brands, and stamps for cases.** And there shall be plainly burned, embossed, or printed on the side of each case, to be known as the Government side, such marks, brands, and stamps to denote the bottling in bond of the whisky packed therein as the Commissioner may by regulations prescribe.

(g) **Trade marks.** And no trade-marks shall be put upon any bottle unless the real name of the actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, shall also be placed conspicuously on said bottle.

(h) **Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 342, amended June 24, 1940, c. 416, § 2, 54 Stat. 512; Feb. 21, 1950, c. 36, § 5, 64 Stat. 8.

¹ Act Mar. 3, 1897, c. 379, § 1, 29 Stat. 626, from which subssecs. (a), (g) of this section were in part derived.

² July 9, 1937, c. 472, 50 Stat. 487, from which subssecs. (b)-(d), (f) of this section were derived.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, to eliminate the provisions for the bottling of distilled spirits in bond after tax payment, to eliminate certain procedural requirements, and to broaden the Commissioner's power to prescribe routine procedures.

1940 Amendment. Subsec. (e) added and former subsec. (e) relettered (f) by Act June 24, 1940.

Subsecs. (f) and (g) relettered (g) and (h), respectively, by Act June 24, 1940.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Time for Claims for Refunds. Sec. 3 of Act June 24, 1940, provided as follows: "Notwithstanding the limitations con-

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tained in sections 2803(c) and 2903(e) Internal Revenue Code, as amended and inserted, respectively, by this Act, as to the time within which claims under such sections must be presented, claims under such sections for the exchange of or refund for stamps lawfully issued prior to the date of enactment of this Act may be allowed if presented within two years from the date of enactment of this Act."

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S.Code Cong.Service, p. 1931.

§ 2904. Regulations governing bottling in bond

(a) **Requirements.** The Commissioner, with the approval of the Secretary, may, by regulations, prescribe the mode of separating and securing the additional warehouse, or portion of the warehouse required in section 2903 to be set apart, the manner in which the business of bottling spirits in bond shall be carried on, the notices, bonds, and returns to be given and accounts and records to be kept by the persons conducting such business, the mode and time of inspection of such spirits, the accounts and records to be kept and returns made by the Government officers, and all such other matters and things, as in his discretion, he may deem requisite for a secure and orderly supervision of said business; and he may also, with the approval of the Secretary, prescribe and issue the stamps required.

The distiller may, in the presence of the storekeeper-gauger, remove by straining through cloth, felt, or other like material any charcoal, sediment, or other like substance found therein, and may whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to 100 per centum proof for spirits for domestic use, or to not less than 80 per centum proof for spirits for export purposes, under such rules and regulations as may be prescribed by the Commissioner with the approval of the Secretary; but no spirits (except gin for export) shall be bottled in bond until they have remained in bond in wooden containers for at least four years from the date of original gauge as to fruit brandy, or original entry as to all other spirits: *Provided*, That nothing in this subchapter shall authorize the labeling of spirits in bottles contrary to the provisions of regulations issued pursuant to the Federal Alcohol Administration Act, 49 Stat. 977 (U.S.C., Title 27, c. 8), or any amendment thereof.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 343.

§ 2905. Exportation of spirits bottled in bond

All distilled spirits intended for export under the provisions of sections 2903 to 2909, inclusive, shall be inspected, bottled, cased, weighed, marked, labeled, stamped, or sealed in such manner and at such time as the Commissioner may prescribe; and the said Commissioner, with the approval of the Secretary, may provide such regulations for the transportation, entry, reinspection, and lading of such spirits for export as may from time to time be deemed necessary; and all provisions of law relating to the exportation of distilled spirits in bond, so far as applicable, and all penalties therein imposed, are extended and made applicable to distilled spirits bottled for export under the provisions of said sections, but no drawback shall be allowed or paid upon any spirits bottled under the provisions of said sections. 53 Stat. 344.

§ 2906. Repealed. Feb. 21, 1950, c. 36, § 7, 64 Stat. 8.

Historical Note

Effective Date. Repeal of section as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2900 of this title.

Repeals. Section 7 of Act Feb. 21, 1950, c. 36, 64 Stat. 8, provided in part that: "All other laws or parts of laws in conflict herewith are hereby repealed: *Provided, however,* That nothing contained herein shall be construed as repealing any law applying to the collection of taxes imposed on distilled spirits imported into the United States, except alcohol that is imported and deposited in an alcohol bonded warehouse pursuant to section 3125, Internal Revenue Code."

Section Prior to Repeal:
"§ 2906. Payment of tax on deficiency in quantity for export

"(a) **Requirements.** Where, upon inspection at the bonded warehouse in which the spirits are bottled as aforesaid, the quantity so bottled and cased for export is less than the quantity actually contained in the distiller's original casks or packages at the time of withdrawal for that purpose the tax on the loss or deficiency so ascertained shall be paid before the removal of the spirits from such warehouse, and the tax so paid shall be receipted and accounted for by the collector in such manner as the Commissioner may prescribe.

"(b) **Transfer of duties**
"For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 344."

§ 2907. Repealed. July 22, 1941, c. 314, § 3, 55 Stat. 602.

Historical Note

Section Prior to Repeal:
"§ 2907. Collection of tax if export cases are tampered with.

"Where, upon reinspection at the port of entry, any case containing or purporting to contain distilled spirits for export is found to have been opened or tampered with, or where any mark, brand, stamp, label, or seal placed thereon or

upon any bottle contained therein has been removed, changed, or willfully defaced, or where upon such reinspection any loss or discrepancy is found to exist as to the contents of any case so entered for export, the tax on the spirits contained in each such case at the time of its removal from warehouse shall be collected and paid. 53 Stat. 344."

§ 2908. Reuse of stamps or bottles, tampering, and unlawful removal

Any person who shall reuse any stamp provided under sections 2903 to 2909, inclusive, after the same shall have been once affixed to a bottle as provided therein, or who shall reuse a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of said sections without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of said sections or of the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of said sections or who shall bottle or case any such spirits in violation of said sections or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened any case or bottle containing such spirits, or who shall willfully remove, change, or deface any stamp, brand, label, or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than \$100 nor more than \$1,000, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States. 53 Stat. 345.

§ 2909. Punishment for counterfeiting stamps

Every person who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under any provision of sections 2903 to 2909, inclusive, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or who shall make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required by said sections, shall on conviction

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tion be punished by a fine not exceeding \$1,000 and by imprisonment at hard labor not exceeding five years. 53 Stat. 345.

§ 2910. Bottling gin in bond for export

(a) **Requirement.** Distilled spirits known commercially as gin of not less than 80 per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 345.

§ 2911. Effect on State laws

Nothing in sections 2903 to 2909, inclusive, shall be construed to exempt spirits bottled under the provisions of said sections from the operation of chapter 728 of the Act of August 8, 1890, 26 Stat. 313, U.S.C., Title 27, § 121. 53 Stat. 345.

§ 2912. Forfeiture of spirits unlawfully removed from distillery or warehouse

All distilled spirits found elsewhere than in a distillery or internal revenue bonded warehouse, not having been removed therefrom according to law, shall be forfeited to the United States. 53 Stat. 345.

§ 2913. Penalty for unlawful removal or concealment of spirits

Whenever any person removes, or aids or abets in the removal of, any distilled spirits on which the tax has not been paid, to a place other than the internal revenue bonded warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of, any distilled spirits from any such warehouse authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than \$200 nor more than \$5,000, and imprisoned not less than three months nor more than three years. 53 Stat. 345.

§ 2914. Penalty on officer in charge of warehouse for unlawful removal of spirits

(a) **Offense.** Whenever any storekeeper-gauger or other person in the employment of the United States, having charge of a bonded warehouse, removes or allows to be removed therefrom any cask or other package, or removes or allows to be removed any part of the contents of any cask or package deposited therein, otherwise than as provided by law, he shall be immediately dismissed from office or employment, and be fined not less than \$500 nor more than \$2,000, and imprisoned not less than three months nor more than two years.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 346.

§ 2915. Storekeeper-gauger's warehouse book

(a) **Requirements.** Every storekeeper-gauger shall keep a warehouse book, which shall at all times be open to the examination of any revenue officer, and shall enter therein an account of all articles deposited in the warehouse to which he is assigned, indicating in each case the date of de-

posit, by whom manufactured or produced, the number and description of the packages and contents, the quantities therein, the marks and serial numbers thereon, and by whom gauged, inspected, or weighed, and if distilled spirits, the number of proof gallons, and of taxable gallons; and before delivering any article from the warehouse he shall enter in said book the date of the permit or order of the collector for the delivery of such articles, the number and description of the packages, the marks and serial numbers thereon, the date of delivery, to whom delivered, and for what purpose, which purpose shall be specified in the permit or order for delivery; and in case of delivery of any distilled spirits the number of proof gallons, and of taxable gallons, shall also be stated; and such further particulars shall be entered in the warehouse books and may be prescribed or found necessary for the identification of the packages, to insure the correct delivery thereof and proper accountability therefor.

And every storekeeper-gauger shall furnish daily to the collector of the district a return of all articles received in and delivered from the warehouse during the day preceding that on which the return is made, and mail at the same time a copy thereof to the Commissioner, and shall, on the first Monday of every month, make a report in duplicate of the number of packages of all articles, with the respective descriptions thereof, as above provided, which remained in the warehouse at the date of his last report, of all articles received therein and delivered therefrom during the preceding month, and of articles remaining therein at the end of said month. He shall deliver one of these reports to the collector having control of the warehouse, to be recorded and filed in his office, and transmit one to the Commissioner, to be recorded and filed in his office.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 346, amended Feb. 21, 1950, c. 36, § 6, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Feb. 21, 1950, which struck out "of gauge or wine gallons," and "gauge or wine gallons, or".

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2300 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S. Code Cong. Service, p. 1931.

§ 2916. Removal for denaturation or destruction of distillates containing aldehydes or fusel oil

(a) Power of Commissioner. Under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary, distillers may collect, in locked tanks, distillates containing one-half of 1 per centum or more of aldehydes or 1 per centum or more of fusel oil (heads and tails) removed in the course of distillation. The distillates so collected may, under regulations prescribed by the Commissioner, with the approval of the Secretary, be removed from such distillery for denaturation or be destroyed in the manner prescribed by the Commissioner, under the supervision of an internal revenue officer to be designated by the Commissioner, and when so denatured or destroyed shall not be subject to the tax imposed by law upon distilled spirits. Such distillates so collected in fruit brandy distilleries may, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, be drawn into approved casks, barrels, or other containers and stored in the brandy deposit room

of the fruit brandy distillery where produced pending removal for denaturation or destruction.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 346.

SUBCHAPTER B.—WINES

§ 3030. Tax on wines

(a) Rate

(1) Still wines

(A) Imposition. Upon all still wines, including vermouth, and all artificial or imitation wines or compounds sold as still wine, produced in or imported into the United States on or after the effective date of section 452(a) of the Revenue Act of 1951, or which on such date were on any winery premises or other bonded premises or in transit thereto or at any custom house, there shall be levied, collected, and paid taxes at rates as follows, when sold, or removed for consumption or sale:

On wines containing not more than 14 per centum of absolute alcohol, 17 cents per wine-gallon, the per centum of alcohol under this section to be reckoned by volume and not by weight, except that on and after April 1, 1955, the rate shall be 15 cents per wine-gallon;

On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 67 cents per wine-gallon, except that on and after April 1, 1955, the rate shall be 60 cents per wine-gallon;

On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, \$2.25 per wine-gallon, except that on and after April 1, 1955, the rate shall be \$2 per wine-gallon;

All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly.

Any such wines may, under such regulations as the Commissioner may prescribe, with the approval of the Secretary, be sold or removed tax-free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

The taxes imposed by this subparagraph (A) of this paragraph shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume; nor, subject to regulations prescribed by the Commissioner, with the approval of the Secretary, to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year.

(B) Cross reference

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(2) Sparkling wines, liqueurs, and cordials. Upon the following articles which are produced in or imported into the United States, on or after the effective date of section 452(a) of the Revenue Act of 1951, or which on such date, are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid, in lieu of the internal-revenue taxes imposed thereon by law prior to such date, taxes at rates as follows, when sold, or removed for consumption or sale:

On each bottle or other container of champagne or sparkling wine, 17 cents on each one-half pint or fraction thereof, except that on and after

April 1, 1955, the rate shall be 15 cents on each one-half pint or fraction thereof;

On each bottle or other container of artificially carbonated wine, 12 cents on each one-half pint or fraction thereof, except that on and after April 1, 1955, the rate shall be 10 cents on each one-half pint or fraction thereof;

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy, 5 cents on each one-half pint or fraction thereof.

Any of the foregoing articles containing more than 24 per centum of absolute alcohol by volume (except vermouth, liqueurs, cordials, and similar compounds made in rectifying plants and containing tax-paid sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy) shall be classed as distilled spirits and shall be taxed accordingly.

The Commissioner, under regulations prescribed by him, with the approval of the Secretary, is authorized to remit, refund, and pay back the amount of all taxes on such liqueurs, cordials, and similar compounds paid by or assessed against rectifiers at the distilled spirits rate prior to June 26, 1936.

(3) Cross references

For tax on the following see the sections enumerated below:

Rectified wines, section 2800(a) (5);

Wine, spirits or grape brandy used in fortifying, section 3031;

Withdrawal of wine spirits for fortification, section 3033.

(b) Payment

(1) Stamp. The taxes imposed by paragraphs (1) and (2) of subsection (a) shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of storage for consumption or sale.

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of wines which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(2) Assessment. The collection of the tax on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner, with the approval of the Secretary, by assessment instead of by stamps.

(3) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170, 53 Stat. 347, amended June 24, 1940, c. 417, §§ 1, 2, 54 Stat. 513, 514, eff. July 1, 1940; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 534(a, b), 55 Stat. 709; Apr. 20, 1942, c. 244, § 1(c), 56 Stat. 218; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 604(a, b), 56 Stat. 973; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 452(a), 65 Stat. 525; Mar. 31, 1954, c. 126, Title VI, § 601(a) (3), (4), 68 Stat. 45.

Historical Note

References in Text. Section "452(a) of the Revenue Act of 1961", referred to in subsecs. (a) (1) (A) and (a) (2), first par., is section 452(a) of Act Oct. 20, 1951, which amended subsecs. (a) (1) (A) and (a) (2) of this section as described in notes hereunder. For effective date of such amendments, see note under section 1650 of this title.

1954 Amendment. Subsec. (a) (1) (A) amended by Act Mar. 31, 1954, § 601(a) (3), which in second par substituted "April 1, 1955" for "April 1, 1954".

Subsec. (a) (2) amended by Act Mar. 31, 1954, § 601(a) (4), which in second and third pars. substituted "April 1, 1955" for "April 1, 1954".

1951 Amendment. Subsec. (a) (1) (A) amended by Act Oct. 20, 1951, § 452(a) (1), which (1) increased tax rates per wine-gallon as follows: in second par., from 10 cents to 17 cents; in third par., from 40 cents to 67 cents; and in fourth par., from \$1.00 to \$2.25; and (2) added the provisions to each such par. specifying the rates to be applicable on and after April 1, 1954.

Subsec. (a) (2) amended by Act Oct. 20, 1951, § 452(a) (2), which (1) in first par., substituted "on or after * * * on such date" in lieu of "after June 30, 1940, or which on July 1, 1940"; (2) increased tax rates per one-half pint or fraction thereof as follows: in second par., from 10 cents to 17 cents; in third and fourth pars., from 5 cents to 12 cents; and (3) added the provisions to second, third and fourth pars. specifying the rates to be applicable on and after April 1, 1954.

1942 Amendment. Subsec. (a), pars. (1) (A) and (2), amended by Act Oct. 21, 1942, which substituted "10", "40", "1 00", "10" and "5", for "8", "30", "65 cents", "7" and "3½" respectively.

Subsec. (a) (2) amended by Act April 20, 1942, which inserted matter relating to pawpaw, papaya, pineapple, and cantaloup wines and brandies. Said Act purported to insert the provisions concerning the wines of such fruit after the words "pear wines" wherever they occur, whereas the words in subsec. (a) (2) read "pear wine".

1941 Amendment. Subsecs. (a) (1) (A) and (a) (2) amended by Act Sept. 20, 1941, § 534(a), (b), respectively, which increased rates.

1940 Amendment. Subsec. (a) (1) (A) amended by Act June 24, 1940.

Subsec. (a) (2) amended by Act June 24, 1940.

Effective Date of 1951 Amendment. Amendments of this section by Act Oct. 20, 1951, as effective on the first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 1650 of this title.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with Oct. 1, 1941, by section 538 thereof.

Effective Date of 1940 Amendment. Sections 1 and 2 of Act June 24, 1940, also provided that the amendments of subsecs. (a) and (b) of this section should be effective as of July 1, 1940.

Tax Refunds on Wines Brought In from Foreign Trade Zones after April 1, 1954. Tax credits or refunds on wines brought in from foreign trade zones on or after April 1, 1954, see note under section 2000 of this title.

Wines in Foreign Trade Zones at Time of Tax Increase. Collection of all taxes on wines which were in foreign trade zones at time of effective date of tax increase made by Act Oct. 20, 1951, and subsequently received in customs territory of United States, see note under section 2000 of this title.

Tax and Customs Duties Refunds on Spirits Lost in Floods of 1951. Tax and customs duties refunds on spirits lost in floods of 1951, see note under section 2800 of this title.

Proprietor's Claim to Credit for Certain Wines. Sections 4 and 5 of Act June 24, 1940, provided as follows:

"Sec. 4. Upon the filing of a claim therefor by the proprietor of any bonded winery or bonded storeroom in which there was stored on June 30, 1940, or to which there was in transit on that date, wine lawfully fortified with brandy or wine spirits, and containing more than 14 per centum of absolute alcohol by volume, and not exceeding 24 per centum of absolute alcohol by volume, the Commissioner of Internal Revenue is authorized to issue to such proprietor suitable documents entitling such proprietor to a credit of 5 cents per gallon in respect of each gallon of such fortified wine which the Commissioner shall find was on such proprietor's bonded winery or bonded storeroom premises on June 30, 1940, or in transit thereto. The amount of such credit shall be allowed in whole or in part in the purchase of wine stamps. The claim shall be supported by an inventory, prepared, and filed by the proprietor in such form and manner as the Commissioner of Internal Revenue shall prescribe by regulations, approved by the Secretary of the Treasury, and by such other proof as the Commissioner may from time to time require. The aforesaid credit to the proprietor may be transferred by the proprietor to whom issued to the proprietor of any other bonded winery or bonded storeroom. All

claims under this section must be filed on or before October 1, 1940.

"Sec. 5. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe and publish all needful rules and regulations for the enforcement of this Act [section 3030(a), 3031(a) of Internal Revenue Code]"

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951]

shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2035.

§ 3031. Tax on brandy or spirits used in fortification

(a) **Withdrawal of spirits for fortification.** Under such regulations and official supervision and upon the giving of such notices and entries as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this subchapter may withdraw from any fruit distillery or internal revenue bonded warehouse grape brandy (hereafter in this section included in the term "brandy"), or wine spirits, for the fortification of such wines on the premises where actually made, and any producer of citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, or apple wines (hereafter in this section included in the term "wines") may similarly withdraw citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brand,¹ pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy (hereafter in this section included in the term "brandy") for the fortification of wines as set forth in section 3032, Internal Revenue Code, on the premises where actually made. The amounts of tax at the rate imposed by law on such brandy or wine spirits shall be charged immediately upon withdrawal against the producer withdrawing the same: *Provided*, That whenever such brandy or wine spirits shall be lawfully used in the fortification of wines and accounted for in the manner provided by law and regulations, the producer shall be credited in the amount of the internal-revenue tax on so much of the brandy or wine spirits so withdrawn as was so used. Every producer of wines who withdraws such brandy or wine spirits shall give bond to fully cover at all times the payment of the internal-revenue tax at the rate imposed by law due on such brandy or wine spirits, which bond shall be in such form as the Commissioner, with the approval of the Secretary, shall, by regulations, prescribe. On and after July 1, 1940, the internal-revenue tax on such brandy or wine spirits shall be assessed against the producer of such wines who has withdrawn brandy or wine spirits for use in the fortification of such wines when such brandy or wine spirits are not lawfully used in the fortification of wines, or when such brandy or wine spirits are not so accounted for in the manner provided by law and regulations as to warrant remission of the tax. The maximum penal sum of any bond required by this subchapter for any bonded winery or bonded storeroom shall be \$50,000.

Nothing contained in this section shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this subchapter.

Any such wines may, under such regulations as the Commissioner may prescribe, with the approval of the Secretary, be sold or removed tax-free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

The taxes imposed by this subchapter shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

(b) Loss allowances

(1) Leakage, evaporation, etc. The Commissioner, under rules and regulations to be by him prescribed with the approval of the Secretary, upon the presentation of proof to his satisfaction of the loss by leakage, evaporation, theft, or otherwise of brandy or fruit spirits, intended for the fortification of wine, from storage tanks in bonded warehouses or from steel drums filled therefrom while such drums are in such warehouse, and in the fortification room of a bonded winery, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the wine-maker or his agents, is hereby authorized to remit or refund the taxes assessed or paid upon such lost brandy or fruit spirits: *Provided, however*, That such remission or refund shall be allowed only to the extent that the distiller or winemaker is not indemnified or recompensed for such loss.

(2) Cross references

For loss allowance in case of grape brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty, while stored in the fortifying room on the winery premises, see section 2901(b).

For loss allowance in case of spirits in possession of common carriers, see section 2901(c).

53 Stat. 348, amended June 24, 1940, c. 417, § 3, 54 Stat. 514, eff. July 1, 1940; Apr. 20, 1942, c. 244, § 1(b), 56 Stat. 218.

¹ So in original. Probably should read "brandy".

Historical Note

1942 Amendment. Subsec. (a) amended by Act April 20, 1942, which inserted matter relating to pawpaw, papaya, pineapple, and cantaloup wines and brandies, and also added last sentence of first par.

1940 Amendment. Subsec. (a) amended by Act June 24, 1940.

Effective Date of 1940 Amendment. Section 3 of Act June 24, 1950, also pro-

vided that the amendment of subsec. (a) of this section should be effective as of July 1, 1940.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 3032. Fortification of wines

(a) Pure sweet wines. Any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner, with the approval of the Secretary, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner, in determining the liability of any distiller of wine spirits to assessment under section 2846, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this chapter.

(b) Citrus-fruit wines. The provisions of this section shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit.

(c) Fruit wines. The provisions of this section shall apply to the use of peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, and apple brandy, in the preparation, respectively, of fortified peach wines, cherry wines, berry wines, apricot

wines, prune wines, plum wines, pear wines, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, and apple wines, in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines; except that (1) no brandy other than peach brandy may be used in the fortification of peach wine and peach brandy may not be used for the fortification of any wine other than peach wine, (2) no brandy other than cherry brandy may be used in the fortification of cherry wine and cherry brandy may not be used for the fortification of any wine other than cherry wine, (3) no brandy other than berry brandy may be used in the fortification of berry wine and a berry brandy prepared from one kind of berry may not be used for the fortification of a berry wine prepared from another kind of berry or for the fortification of any wine other than berry wine, (4) no brandy other than apricot brandy may be used in the fortification of apricot wine and apricot brandy may not be used for the fortification of any wine other than apricot wine, (5) no brandy other than prune brandy may be used in the fortification of prune wine and prune brandy may not be used for the fortification of any wine other than prune wine, (6) no brandy other than pear brandy may be used in the fortification of pear wine and pear brandy may not be used for the fortification of any wine other than pear wine, and (7) no brandy other than plum brandy may be used in the fortification of plum wine and plum brandy may not be used for the fortification of any wine other than plum wine; (8) no brandy other than pawpaw brandy may be used in the fortification of pawpaw wines and pawpaw brandy may not be used for the fortification of any wine other than pawpaw wines; (9) no brandy other than papaya brandy may be used in the fortification of papaya wine and papaya brandy may not be used for the fortification of any wine other than papaya wine; (10) no brandy other than pineapple brandy may be used in the fortification of pineapple wine and pineapple brandy may not be used for the fortification of any wine other than pineapple wine; (11) no brandy other than cantaloup brandy may be used in the fortification of cantaloup wine and cantaloup brandy may not be used for the fortification of any wine other than cantaloup wine; and (12) no brandy other than apple brandy may be used in the fortification of apple wine and apple brandy may not be used for the fortification of any wine other than apple wine.

(d) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 350, amended Apr. 20, 1942, c. 244, § 1(d), 56 Stat. 218.

Historical Note

1942 Amendment. Subsec. (c) amended by Act April 20, 1942, which inserted matter relating to pawpaw, papaya, pineapple, and cantaloup brandies and wines; renumbered former clause (8) to be (12); and inserted new clauses (8)-(11).

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3033. Withdrawal of wine spirits

(a) Regulations. Under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner, with the approval of the Secretary, shall prescribe, any producer of pure sweet wines as defined by section 3036(a) may withdraw wine spirits from any internal revenue bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the dis-

position of the same as the Commissioner, with the approval of the Secretary, shall prescribe in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the limitations and provisions of this section; and the Commissioner, with the approval of the Secretary, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced.

(b) Cross references

For loss allowance in case of grape brandy withdrawn for use and fortification of sweet wines and accidentally destroyed prior to such use, while stored in the fortifying room on the winery premises, see section 2901(b).

For loss allowance in case of spirits in possession of common carriers, see section 2901(c).

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 351.

§ 3034. Supervision of fortification of sweet wine

(a) Use. The use of wine spirits for the fortification of sweet wines under this subchapter shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner, with the approval of the Secretary; and the Commissioner, with the approval of the Secretary, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 351.

§ 3035. Power of Secretary to authorize amelioration and fortification of wine without supervision

The Secretary may, by regulations, authorize the amelioration of wine by the winemaker and the fortification of wine, without supervision by any officer of the United States, whenever he determines that such authorization may be made without danger to the revenue. 53 Stat. 351.

§ 3036. Wine spirits and pure sweet wine

(a) Definitions. The wine spirits mentioned in section 3032(a) is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this chapter is fermented or partially fermented

grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: *Provided*, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: *Provided, however*, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of 11 per centum of the weight of the wine to be fortified: *And provided further*, That the addition of water herein authorized shall be under such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe: *Provided, however*, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this chapter, where the same, after fermentation and before fortification, have an alcoholic strength of less than 5 per centum of their volume.

(b) **Application to citrus-fruit wines.** The provisions of this section shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit.

(c) **Application to fruit wines.** The provisions of this section shall apply to the use of peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, and apple brandy, in the preparation, respectively, of fortified peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, and apple wines, in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines; except that (1) no brandy other than peach brandy may be used in the fortification of peach wine and peach brandy may not be used for the fortification of any wine other than peach wine, (2) no brandy other than cherry brandy may be used in the fortification of cherry wine and cherry brandy may not be used for the fortification of any wine other than cherry wine, (3) no brandy other than berry brandy may be used in the fortification of berry wine and a berry brandy prepared from one kind of berry may not be used for the fortification of a berry wine prepared from another kind of berry or for the fortification of any wine other than berry wine, (4) no brandy other than apricot brandy may be used in the fortification of apricot wine and apricot brandy may not be used for the fortification of any wine other than apricot wine, (5) no brandy other than prune brandy may be used in the fortification of prune wine and prune brandy may not be used for the fortification of any wine other than prune wine, (6) no brandy other than pear brandy may be used in the fortification of pear wine

and pear brandy may not be used for the fortification of any wine other than pear wine, and (7) no brandy other than plum brandy may be used in the fortification of plum wine and plum brandy may not be used for the fortification of any wine other than plum wine, (8) no brandy other than pawpaw brandy may be used in the fortification of pawpaw wine, and pawpaw brandy may not be used for the fortification of any wine other than pawpaw wine; (9) no brandy other than papaya brandy may be used in the fortification of papaya wine and papaya brandy may not be used for the fortification of any wine other than papaya wine; (10) no brandy other than pineapple brandy may be used in the fortification of pineapple wine, and pineapple brandy may not be used for the fortification of any wine other than pineapple wine; (11) no brandy other than cantaloup brandy may be used in the fortification of cantaloup wine, and cantaloup brandy may not be used for the fortification of any wine other than cantaloup wine; and (12) no brandy other than apple brandy may be used in the fortification of apple wine and apple brandy may not be used for the fortification of any wine other than apple wine. 53 Stat. 352, amended Apr. 20, 1942, c. 244, § 1(e), 56 Stat. 218.

Historical Note

1942 Amendment. Subsec. (c) amended by Act April 20, 1942, which inserted matter relating to pawpaw, papaya, pineapple, and cantaloup brandies and wines; renumbered former clause (8) to be (12); and inserted new clauses (8)-(11).

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3037. Removal of domestic wines free of tax

(a) **Regulations.** Under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, domestic wines subject to the taxes imposed by section 3030(a), may be removed from the winery where produced, free of tax, for storage on other bonded winery or bonded storeroom premises, or from such premises to other such bonded premises, or for exportation from the United States or for use as distilling material at any regularly registered distillery or industrial alcohol plant: *Provided, however,* That the distiller using any such wine as distilling material shall, subject to the provisions of section 2846, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification: *Provided further,* That suitable samples of brandy or fruit spirits may be withdrawn under rules and regulations to be prescribed by the Commissioner, subject to the approval of the Secretary, which samples shall be tax-free if for laboratory analysis and tax-paid if for any other use: *Provided further,* That the Commissioner, under rules and regulations to be by him prescribed subject to the approval of the Secretary, shall remit or refund all fortification taxes assessed or paid upon the quantity of fortifying spirits contained in wines exported, or which have become unfit for use as wine and are used as distilling material.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 353.

§ 3038. Grape and like wines for industrial use

(a) **Regulations.** Under regulations prescribed by the Commissioner with the approval of the Secretary, it shall be lawful to produce grape wines, citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, pawpaw wines, papaya wines,

pineapple wines, cantaloup wines, and apple wines on bonded winery premises by the usual method, and to transport and use the same, and like wines heretofore produced and now stored on bonded winery premises, as distilling material in any fruit-brandy distillery or industrial-alcohol plant.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 353, amended Apr. 20, 1942, c. 244, § 1(g), 56 Stat. 219.

Historical Note

1942 Amendment. Subsec. (a) amended by Act April 20, 1942, which inserted matter relating to pawpaw, papaya, pineapple, and cantaloup wines.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3039. Allowance for loss during storage or cellar treatment

(a) Power of Commissioner. The Commissioner, with the approval of the Secretary, is authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment may be just and proper.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 353.

§ 3040. Requirements on producers

(a) Notice, bonds, and stamps. Every person producing after February 24, 1919, or having in his possession or under his control on February 24, 1919, any wines subject to the tax imposed in paragraphs (1) and (2) of section 3030(a) shall file such notice, describing the premises on which such wines are produced or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask, barrel, bottle, or other immediate container, and to each case or other shipping container, of such wine, such marks, labels, or stamps as the Commissioner, with the approval of the Secretary, may from time to time prescribe as to each; and the premises described in such notice shall, for the purpose of this chapter, be regarded as bonded premises.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 354.

§ 3041. Spirit meters, locks, and seals

(a) Regulations. The Commissioner, by regulations to be approved by the Secretary, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 354.

§ 3042. Assignment of storekeeper-gaugers to fruit distilleries and wineries

(a) Power of Commissioner. The Commissioner is authorized to assign to any fruit distillery and to each winery where wines are to be fortified such number of storekeeper-gaugers as may be necessary for the

proper supervision of the manufacture of brandy or the making or fortifying of wines subject to tax imposed by this chapter.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170: 53 Stat. 354.

§ 3043. Penalties and forfeitures

(a) Offenses. Whoever evades or attempts to evade any tax imposed by sections 3030 or 3031, or any requirement of this subchapter, or regulation issued pursuant thereto, or whoever, otherwise than as provided in this subchapter, recovers or attempts to recover any spirits from domestic or imported wine, shall, on conviction, be punished for each such offense by a fine of not exceeding \$5,000, or imprisonment for not more than five years, or both, and in addition thereto by a penalty of double the tax evaded, or attempted to be evaded, to be assessed and collected in the same manner as taxes are assessed and collected, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provisions of this section and of section 3254(g) relating to rectification, or other internal revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of sections 3030 or 3031, with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards, nor to apply to or prohibit the fermentation of grape wine retsina with resin on bonded winery premises: *Provided*, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in sections 3036 and 3044.

(b) Cross references

For forfeiture of wines in case special tax has not been paid or business of distiller is carried on without bond or with intent to defraud the Government of tax, see sections 2833 and 3253.

For penalty and forfeiture imposed upon rectifiers and wholesale liquor dealers for committing offenses not specifically covered by law, see section 2806(g).

For penalties and forfeitures for other violations, see section 3173.
53 Stat. 354, amended July 14, 1947, c. 246, § 1(2), 61 Stat. 320.

Historical Note

1947 Amendment. Subsec. (a) amended by Act July 14, 1947, which added provision to second sentence exempting the fermentation of grape wine retsina with resin on bonded winery premises.

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act July 14, 1947, see 1947 U.S.Code Cong.Service, p. 1291.

§ 3044. Definitions

(a) Natural wine. Natural wine within the meaning of this subchapter shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging.

(b) Wine. The product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a storekeeper-gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the re-

sultant product more than 35 per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than 13 per centum of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening, shall be deemed to be wine within the meaning of this subchapter, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name of its own particular type or variety.

(c) **Sweet wine.** Wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this subchapter, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this subchapter.

(d) **Pure sweet wine**

For definition of pure sweet wine, see section 3036(a).

53 Stat. 355, amended July 14, 1947, c. 246, § 1(3), 61 Stat. 320.

Historical Note

1947 Amendment. Subsec. (b) amended by Act July 14, 1947, to allow wines which are sweetened to contain not more than 13 per centum of alcohol after complete fermentation and sweetening.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3045. Application of natural wine provisions to citrus-fruit wines and other like wines

The provisions of the internal revenue laws applicable to natural wine shall apply in the same manner and to the same extent to citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, pawpaw wines, papaya wines, pineapple wines, cantaloup wines, and apple wines, which are the products, respectively, of normal alcoholic fermentation of the juice of sound ripe (1) citrus-fruit (except lemons and limes), (2) peaches, (3) cherries, (4) berries, (5) apricots, (6) prunes, (7) plums, (8) pears, (9) pawpaws, (10) papayas, (11) pineapples, (12) cantaloups, (13) apples, with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging: *Provided*, That in the case of wines produced from loganberries, currants, or gooseberries, respectively, having a normal acidity of twenty parts or more per thousand, the volume of the resultant product may be increased more than 35 per centum but not more than 60 per centum by the addition of sugar and water solution under such regulations as the Commissioner of Internal Revenue may prescribe. 53 Stat. 355, amended Apr. 20, 1942, c. 244, § 1(a), 56 Stat. 218; July 14, 1947, c. 246, § 1(4), 61 Stat. 320.

Historical Note

1947 Amendment. Act July 14, 1947, added proviso relating to wines produced from loganberries, currants, or gooseberries.

1942 Amendment. Act April 20, 1942, inserted matter relating to pawpaws, pa-

payas, pineapples, cantaloups, and their wines.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBCHAPTER C.—INDUSTRIAL ALCOHOL

PART I.—DENATURATION

§ 3070. Withdrawal from bond tax free

(a) **For industrial use.** Domestic alcohol of such degree of proof as may be prescribed by the Commissioner, and approved by the Secretary, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner with the approval of the Secretary.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner, who shall, with the approval of the Secretary, make all necessary regulations for carrying into effect the provisions of this subsection.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this section shall keep such books and records, execute such bonds and render such returns as the Commissioner, with the approval of the Secretary, may by regulation require. Such books and records shall be open at all times to the inspection of any internal revenue officer or agent.

(b) **For use in manufacture of chemicals.** Notwithstanding anything contained in subsection (a), domestic alcohol when suitably denatured may be withdrawn from bond without the payment of internal revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol. Rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of subsection (a).

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 355.

§ 3071. Drawing off and transfer of alcohol for denaturation

For provisions relating to the drawing off and transfer of alcohol for denaturation, see section 3103(a). 53 Stat. 356.

§ 3072. Unlawful use or concealment of denatured alcohol

Any person who withdraws alcohol free of tax under the provisions of section 3070(a) and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and any person who uses alcohol withdrawn from bond under the provisions of said section for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from

such alcohol, or knowingly violates any of the provisions of section 3070(a) or 3073, or (except as provided in section 3073) who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of section 3070(a), or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than \$5,000, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful acts are performed or permitted to be performed. 53 Stat. 357.

§ 3073. Recovery of spirits for reuse in manufacture

(a) **Regulations.** Manufacturers employing processes in which alcohol, used free of tax under the provisions of section 3070(a), is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 357.

§ 3074. Sale of abandoned spirits for denaturation without collection of tax

(a) **Regulations.** Notwithstanding the provisions of section 2805(b) of this chapter, any distilled spirits abandoned to the United States may be sold, in such cases as the Commissioner may by regulation provide, to the proprietor of any industrial alcohol plant for denaturation, or redistillation and denaturation, without the payment of the internal-revenue tax thereon.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 357.

PART II.—INDUSTRIAL ALCOHOL PLANTS

§ 3100. Establishment of industrial alcohol plants

(a) **Requirements.** Any person establishing a plant for the production of industrial alcohol shall, before operation, make application to the Commissioner for registration of his plant, file bond, and receive permit for the operation of such plant.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 357.

§ 3101. Establishment of industrial alcohol warehouses

(a) **Requirements.** Warehouses for the storage and distribution of alcohol may be established upon filing of application and bond, and issuance of permit at such places, either in connection with the manufacturing plant or elsewhere, as the Commissioner may determine; and the entry and storage of alcohol therein, and the withdrawals of alcohol therefrom shall be made in such containers and by such means as the Commissioner by regulation may prescribe. Permanent tanks and other structures located on the industrial alcohol plant premises and approved

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by the Commissioner, shall be deemed to be warehouses within the meaning of this section.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 357.

§ 3102. Establishment of denaturing plants

Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage. 53 Stat. 357.

§ 3103. Exemption of industrial alcohol plants and warehouses from certain laws

Industrial alcohol plants and bonded warehouses established under the provisions of this part shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327 of the Revised Statutes; sections 48 to 60, inclusive, and sections 62 and 67 of the act of August 27, 1894 (Twenty-eighth Statutes, pages 563 to 568), as such sections existed on October 28, 1919, and from such other provisions of laws existing on October 28, 1919, relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this subchapter.

Regulations may be made embodying any provision of the sections above enumerated. 53 Stat. 357.

§ 3104. Withdrawal of fermented liquors to industrial alcohol plants

(a) **Requirements.** Fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial alcohol plant, to be used as distilling material, and the residue from such distillation, containing less than one-half of 1 per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner shall deem proper, and the Commissioner, with the approval of the Secretary, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 358.

§ 3105. Regulations for establishing, bonding, and operation of plants and warehouses

(a) **Requirements.** The Commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent

diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 358.

§ 3106. Production, use, or sale of alcohol

(a) Requirements. Alcohol may be produced at any industrial alcohol plant established under the provisions of this part, from any raw materials or by any processes suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this part provided.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 358.

§ 3107. Transfer of alcohol to other plants or warehouses

Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose. 53 Stat. 359.

§ 3108. Withdrawal of alcohol tax-free

(a) For denaturation. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

(b) For use by Federal or State agencies. Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any governmental agency thereof, or by the several States and Territories or any municipal subdivision thereof or by the District of Columbia.

(c) For use in research, hospitals, or charitable clinics. Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free for the use of any scientific university or college of learning, any laboratory for use exclusively in scientific research, or for use in any hospital or sanitarium, or for the use of any clinic operated for charity and not for profit, including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof, but not for sale.

(d) Conditions of exemptions. But any person permitted to obtain alcohol tax free, except the United States and the several States and Territories and subdivisions thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under section 3114, but alcohol withdrawn for nonbeverage purposes for use of the United States and the several States, Territories and subdivisions thereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 359.

§ 3109. **Sale of denatured alcohol tax-free**

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export. 53 Stat. 359.

§ 3110. **Distilled vinegar**

Nothing in this part shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same. 53 Stat. 359.

§ 3111. **Taxability of denatured alcohol or articles produced, transferred, used, or sold in violation of law or regulations**

Any person who shall produce, withdraw, sell, transport, or use denatured alcohol, denatured rum, or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured alcohol, denatured rum, or articles shall be subject to all provisions of law pertaining to alcohol that is not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured alcohol, denatured rum, or articles shall be required to pay such tax. 53 Stat. 359.

§ 3112. **Tax on alcohol**

(a) **Time of attachment and lien.** Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining.

(b) **Payment of tax.** The provisions of section 2800(a) (1) (A) and (B) relating to the tax payment of distilled spirits by stamp and to the penalty and forfeiture provisions applicable to the violations therein set forth shall, so far as applicable, extend to and include the tax payment of alcohol produced in the United States or imported in accordance with the provisions of section 3125. 53 Stat. 360, amended Feb. 21, 1950, c. 36, § 8, 64 Stat. 8.

Historical Note

1950 Amendment. Subsec. (b) amended by Act Feb. 21, 1950, to extend the provisions of section 2800(a) (1) (A), (B) to alcohol produced in the United States or imported under section 3125, insofar as they relate to the tax payment of distilled spirits by stamp and to the applicable penalty and forfeiture provisions.

Effective Date of 1950 Amendment. Amendment of section by Act Feb. 21, 1950, as effective on the first day of the

first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 21, 1950, see 1950 U.S. Code Cong. Service, p. 1931.

§ 3113. **Refund of tax on alcohol for loss or leakage**

(a) **Requirements.** Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the Commissioner may remit or refund any tax incurred under existing law

upon such alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: *Provided, also*, That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 360.

§ 3114. Alcohol permits

(a) Requirements. No one shall manufacture alcohol, procure it tax free, denature it, deal in or use specially denatured alcohol, recover completely or specially denatured alcohol, or transport specially denatured or tax-free alcohol, without first obtaining a permit from the Commissioner so to do. All such permits may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided*, That the Commissioner may without formal application or new bond extend any permit granted under this part after August 31 in any year to December 31 of the succeeding year.

Permits to purchase or procure specially denatured alcohol and tax-free alcohol shall be issued in such terms and under such conditions as the Commissioner shall by regulation prescribe.

No permit shall be issued to any person who, within one year prior to the application therefor or issuance thereof, shall not in good faith have conformed to the provisions of this part, or shall have violated the terms of any permit issued under this part, or made any false statement in the application therefor, or willfully failed to disclose any information required by regulation to be furnished, or violated any law of the United States relating to intoxicating liquor, or willfully violated any law of any State, Territory, or possession of the United States or of the District of Columbia relating to intoxicating liquor.

Every permit shall be in writing, dated when issued, and signed by the Commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the alcohol or denatured alcohol is to be used.

The Commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted, the Commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this part. In the event of the refusal by the Commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in subsection (c).

(b) Violation. If at any time there shall be filed with the Commissioner a complaint under oath setting forth facts showing, or if the Commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this part, or has violated the terms of such permit, or has made any false statement in the application therefor, or has willfully failed to disclose any information required by regulation to be furnished, or has violated any law of the United States or of any State, Territory, or possession of the United States or of the District of Columbia relating to intoxicating liquor, the Commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation,

which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the Commissioner, with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person is not in good faith conforming to the provisions of this part or has violated the terms of his permit, or made any false statement in the application therefor, or willfully failed to disclose any information required by regulation to be furnished, or violated any law of the United States relating to intoxicating liquor, or willfully violated any law of any State, Territory, or possession of the United States or of the District of Columbia relating to intoxicating liquor, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the Commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in subsection (c). During the pendency of such action such permit shall be temporarily revoked.

(c) **Inaccurate description of denatured articles.** Whenever the Commissioner has reason to believe that denatured alcohol, denatured rum, or articles do not correspond with the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, he shall cause an analysis of said alcohol, rum, or articles to be made, and if upon such analysis the Commissioner shall find that said alcohol, rum, or articles do not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said alcohol, rum, or articles should not be dealt with as other distilled spirits, such notice to be served personally or by registered mail, as the Commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said alcohol, rum, or articles fails to show to the satisfaction of the Commissioner that the alcohol, rum, or articles manufactured by him correspond to the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, his permit to manufacture and sell the same shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the Commissioner reviewed, and the court may affirm, modify, or reverse the finding of the Commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such alcohol, rum, or articles.

(d) **Delivery to agent in case of prosecution or revocation.** In case of a sale of liquor or denatured alcohol or denatured rum where the delivery thereof was made by a common or other carrier the sale and delivery for purposes of prosecution or revocation of any permit shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in any such county or district.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 360.

§ 3115. Penalties

(a) **Violations as to operation of plants or unlawful withdrawal of taxable alcohol.** Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this part and lawful

regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this part or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than \$100 nor more than \$10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the Commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

(b) **Violations in general.** Any person violating the provisions of this part or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a). It shall be the duty of the prosecuting officer to ascertain, in the case of every violation of this part or the regulations made thereunder, for which offense a special penalty is not prescribed, whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment.

(c) **Previous conviction.** If any act or offense is a violation of this part, and also of any other law in regard to the manufacture or taxation of, or traffic in, intoxicating liquor, a conviction for such act or offense under the one shall be a bar to prosecution therefor under the other. 53 Stat. 362.

§ 3116. Forfeitures and seizures

It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of the Act of June 15, 1917, 40 Stat. 228, for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal-revenue laws. 53 Stat. 362.

Historical Note

References in Text. Title XI of the Act of June 15, 1917, 40 Stat. 228, referred to in the text, was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 863, and is now covered by sections 1021, 2231, 2234,

2235, 3105 and 3109 of Title 18, Crimes and Criminal Procedure, and rule 41 of the Federal Rules of Criminal Procedure, 18 U.S.C.A.

§ 3117. **Officers and agents authorized to investigate, issue search warrants, and prosecute for violations**

(a) **Duties.** The Commissioner, his assistants, agents, and inspectors, shall investigate and report violations of this part to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and the Commissioner, his assistants, agents, and inspectors, may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney,

conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes is hereby made applicable in the enforcement of this part. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the Act of June 15, 1917, 40 Stat. 228.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 363.

Historical Note

References in Text. Title XI of the Act of June 15, 1917, 40 Stat. 228, referred to in the text, was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and is now covered by sections 1621, 2231, 2234, 2235, 3105 and 3109 of Title 18, Crimes and Criminal Procedure, and

rule 41 of Federal Rules of Criminal Procedure, 18 U.S.C.A.

Section 1014 of the Revised Statutes, referred to in the text, was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and is now covered by section 3141 of Title 18, Crimes and Criminal Procedure.

§ 3118. Release of seized property upon execution of bond

When any property is seized for violation of this part it may be released to the claimant or to any intervening party, in the discretion of the Commissioner, on a bond given and approved. 53 Stat. 363.

§ 3119. Compliance with court subpoena as to testifying or producing records

No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this part; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. 53 Stat. 363.

§ 3120. Form of affidavit, information, or indictment

In any affidavit, information, or indictment for the violation of this subchapter, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. 53 Stat. 363.

§ 3121. Powers and duties of persons enforcing this part

(a) **Commissioner and other persons.** The Commissioner, his assistants, agents, and inspectors, and all other officers, employees, or agents of the United States, whose duty it is to enforce criminal laws, shall have all the rights, privileges, powers, and protection in the enforcement of the provisions of this part which are conferred by law for the enforcement of any laws in respect of the taxation, importation, exportation, transportation, manufacture, possession, or use of, or traffic in, intoxicating liquors.

(b) **Delegation of duties to assistants.** Any Act authorized by this subchapter to be done by the Commissioner may be performed by any

assistant or agents designated by him for that purpose. Records, reports, or returns required to be filed with the Commissioner may be filed with an Assistant Commissioner or other person designated by the Commissioner to receive such records, reports, or returns.

(c) **Power to secure records.** All records and reports kept or filed under the provisions of this part, and all liquor or property to which such records or reports relate, shall be subject to inspection at any reasonable hour by the Commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the State where the records or reports are kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the Commissioner when called for.

(d) **Applicability of other laws**

The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act (U.S.C., title 15, secs. 49, 50), as now or hereafter amended, shall be applicable to the jurisdiction, powers, and duties under this part of the Secretary, and to any person (whether or not a corporation) subject to the provisions of this part.

(e) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 363, amended Sept. 14, 1951, c. 400, § 1, 65 Stat. 321.

Historical Note

1951 Amendment. Subsec. (d) added by Act Sept. 14, 1951. Subsec. (e), formerly subsec. (d), redesignated "(e)" by Act Sept. 14, 1951.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 14, 1951, see 1951 U.S. Code Cong. Service, p. 2186.

§ 3122. Other laws applicable

All administrative provisions of internal-revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties, and the seizure and forfeiture of property, are made applicable to this part in so far as they are not inconsistent with the provisions thereof. 53 Stat. 364.

§ 3123. Application of part to Puerto Rico and Virgin Islands

This part, and all provisions of the internal revenue laws relating to the enforcement thereof, are hereby extended to and made applicable to Puerto Rico and the Virgin Islands, from and after August 27, 1935. The respective Insular Governments shall advance to the Treasury of the United States such funds as may be required from time to time by the Secretary of the Treasury for the purpose of defraying all expenses incurred by the Treasury Department in connection with the enforcement in Puerto Rico and the Virgin Islands of this part and regulations promulgated thereunder. The funds so advanced shall be deposited in a separate trust fund in the Treasury of the United States and shall be available to the Treasury Department for the purposes of this subsection. 53 Stat. 364.

§ 3124. Definitions

(a) When used in this part

(1) The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

(2) The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding, storing, transferring, or shipment of alcohol.

(3) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the Commissioner may grant the request;

(4) The term "permit" shall mean a formal written authorization by the Commissioner setting forth specifically therein the things that are authorized;

(5) The term "bond" shall mean an obligation authorized or required by or under this part, Title I of the Liquor Law Repeal and Enforcement Act, 49 Stat. 872, or Title III of the National Prohibition Act, 41 Stat. 319, or any regulation thereunder, executed in such form and for such penal sum as may be required by the Commissioner or prescribed by regulation;

(6) The term "regulation" shall mean any regulation prescribed by the Commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this part, and the Commissioner is authorized to make such regulations.

(7) The term "articles" shall mean any substance or preparation in the manufacture of which denatured alcohol or denatured rum is used.

(8) The term "person" shall mean and include natural persons, firms, partnerships, corporations, and associations.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 364.

§ 3125. Importation of alcohol for industrial purposes

(a) **Importation without payment of internal revenue tax.** Under regulations to be prescribed by the Commissioner with the approval of the Secretary, and subject from the time of its withdrawal from customs custody to all the applicable provisions of this part, alcohol of 160 proof, or greater, may be imported into the United States and be withdrawn, in bond, from customs custody, without payment of the internal-revenue tax imposed by section 2800 upon the act of importing such alcohol, for transfer to industrial alcohol plants, alcohol bonded warehouses, and denaturing plants for redistillation or denaturation and withdrawal, or withdrawal without redistillation or denaturation, tax free or tax paid, as the case may be, for all the purposes authorized by this part. If such alcohol is withdrawn from the said industrial alcohol plants, alcohol bonded warehouses, or denaturing plants for beverage purposes, there shall be paid upon such withdrawal an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty already paid thereon.

(b) **Withdrawal tax free for use of United States.** Alcohol may be withdrawn from customs custody by the United States or any governmental agency thereof for its own use, free of internal-revenue tax, under such regulations as may be prescribed. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 602(e) (1), 56 Stat. 971.

Historical Note

Effective Date. Act Oct. 21, 1942, was made effective Oct. 22, 1942, by section 602(e) (2) thereof.

§ 3126. Emergency production of sugars and sirups in industrial alcohol plants

(a) **In general.** Notwithstanding the provisions of sections 2819 and 3122, and of any other law, until April 30, 1948, sugars and sirups from potatoes and from high moisture or damaged grain may be produced in industrial alcohol plants simultaneously with, or alternately with, the production of alcohol.

(b) **Regulations.** The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations to carry out the provisions of this section. Added Nov. 5, 1945, c. 446, 59 Stat. 555, amended June 24, 1946, c. 469, 60 Stat. 306; Feb. 1, 1947, c. 2, 61 Stat. 4.

Historical Note

ed by Joint Res. Feb. 1, 1947, which extended from Feb. 1, 1947 to Apr. 30, 1948, the period of time during which alcohol plants are permitted to produce sugars or syrups simultaneously with the production of alcohol.

1946 Amendment. Subsec. (a) amended by Act June 24, 1946, which extended the time limitation from July 1, 1946, to Feb. 1, 1947.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts 1947 Amendment. Subsec. (a) amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Feb. 1, 1947, see 1947 U.S.Code Cong.Service, p. 946.

SUBCHAPTER D.—FERMENTED LIQUORS

§ 3150. Tax

(a) **Rate.** There shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of 1 per centum, or more, of alcohol brewed or manufactured and sold, or removed for consumption or sale, within the United States, or imported into the United States, by whatever name such liquors may be called, a tax of \$9 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. On and after April 1, 1955, the tax imposed by the preceding sentence shall be at the rate of \$8 in lieu of \$9. In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel, containing less than one-eighth, shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead.

The provisions of this section requiring the accounting of hogsheads, barrels, and fractional parts of barrels at the next higher quantity shall not apply where the contents of such hogsheads, barrels, or fractional parts of barrels are within the limits of tolerance established by the Commissioner by regulations which he is hereby authorized to prescribe with the approval of the Secretary; and no assessment shall be made and no tax shall be collected for any excess in any case where the contents of the hogsheads, barrels, or fractional parts of barrels heretofore or hereafter used are within the limits of the tolerance so prescribed.

(b) Payment

(1) **In general.** The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the time hereinafter specified.

(2) **Method of payment.** The tax on fermented malt liquor brewed or manufactured and sold, or removed for consumption or sale, within the United States, shall be paid by stamp, under such rules and regulations, permits, bonds, records, and returns, and with the use of such tax-stamp machines or metering or other devices and apparatus, as the Commissioner with the approval of the Secretary shall prescribe.

(3) **Penalties.** Whoever manufactures, procures, possesses, uses or tampers with a tax-stamp machine which may be required under this section with intent to evade the internal-revenue tax imposed upon fermented malt liquors, and whoever, with intent to defraud, makes, alters, simulates, or counterfeits any stamp of the character imprinted by such stamp machine, or who procures, possesses, uses, or sells any forged, altered, counterfeited, or simulated tax stamp or any plate, die, or device intended for use in forging, altering, counterfeiting, or simulating any such stamp, or who otherwise violates the provisions of this section, or the regulations issued pursuant thereto, shall pay a penalty of \$5,000 and shall be fined not more than \$10,000 or be imprisoned not more than five years, or both, and any machine, device, equipment, or materials used in violation of this section shall be forfeited to the United States and after condemnation shall be destroyed. But this provision shall not exclude any other penalty or forfeiture provided by law.

(4) **Unfermented worts sold by one brewer to another.** When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale ale, porter, lager beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale or transfer shall be subject to such restrictions and regulations as the Commissioner may prescribe.

(c) **Exemption of materials used in producing fermented or malt liquors.** Nothing contained in section 3155(c) shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in paragraph (1) of subsection (b), and not otherwise: *Provided*, That this subsection shall not apply to cases of fraud: *And provided further*, That nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(d) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(e) 1942 floor stocks tax

(1) **Tax.** Upon all fermented malt liquors upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title VI of the Revenue Act of 1942 are held by any person and intended for sale there shall be levied, assessed, collected, and paid a floor stocks tax at a rate of \$1 per barrel of 31 gallons.

(2) **Returns.** Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by para-

graph (1) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of Title VI of the Revenue Act of 1942 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title VI of the Revenue Act of 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by subsection (a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by this subsection.

(f) 1944 floor stocks tax

(1) **Tax.** Upon all fermented malt liquors upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title III of the Revenue Act of 1943 are held by any person and intended for sale there shall be levied, assessed, collected, and paid a floor stocks tax at a rate of \$1 per barrel of 31 gallons.

(2) **Returns.** Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by paragraph (1) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of Title III of the Revenue Act of 1943 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title III of the Revenue Act of 1943, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by subsection (a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by this subsection.

(g) 1951 Floor stocks tax

(1) **Tax.** Upon all fermented malt liquors upon which the internal revenue tax imposed by law has been paid, and which on the effective date of section 453(a) of the Revenue Act of 1951 are held by any person and intended for sale there shall be levied, assessed, collected, and paid a floor stocks tax at a rate of \$1 per barrel of 31 gallons.

(2) **Returns.** Under such regulations as the Secretary shall prescribe, every person required by paragraph (1) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of section 453(a) of the Revenue Act of 1951 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of section 453(a) of the Revenue Act of 1951, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Secretary may prescribe.

(3) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by subsection (a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by this subsection. 53 Stat. 365, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (10), 55 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 603, 56 Stat. 972; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III,

§ 308(b), 58 Stat. 67; June 30, 1948, c. 770, §§ 1, 2, 62 Stat. 1171; Aug. 23, 1949, c. 498, § 1, 63 Stat. 624; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title I, § 453, 65 Stat. 526; Mar. 31, 1954, c. 126, Title VI, § 601(a) (5), 68 Stat. 45.

Historical Note

References in Text. Effective date of Title VI of the Revenue Act of 1942, referred to in subsec. (e) (1) (2), commenced on the first day of the first month which began more than 10 days after Oct. 21, 1942, 4:30 p. m., E.W.T. See "Effective Date of 1942 Amendment" note under this section.

Effective date of Title III of the Revenue Act of 1943, referred to in subsec. (f) (1) (2), commenced on the first day of the first month which began more than 10 days after Feb. 25, 1944, 12:49 p. m., E.W.T. See "Effective Date of 1944 Amendment" note under this section.

Section "453(a) of the Revenue Act of 1951", referred to in subssecs. (g) (1) and (g) (2), is section 453(a) of Act Oct. 21, 1951, which section amended subsec. (a) of this section as described in note hereunder. For effective date of such amendment, see note under section 1650 of this title.

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which in second sentence of first par. substituted "April 1, 1955" for "April 1, 1954".

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 453(*), which, in first par., substituted tax of \$9 per barrel for prior tax of \$7, and struck out former second sentence relating to war-tax rate, inserting in lieu thereof present second sentence.

Subsec. (g) added by Act Oct. 20, 1951, § 453(b).

1949 Amendment. Subsec. (b) amended by Act Aug. 23, 1949, which renumbered former par. (2) to be (4) and inserted new pars. (2) and (3).

1948 Amendment. Subsec. (a) amended by Act June 30, 1948, to make imported fermented liquors subject to the same war-tax rate of \$8.00 per barrel as is imposed on domestic fermented liquors.

1944 Amendment. Subsec. (f) added by Act Feb. 25, 1944.

1942 Amendment. Subsec. (a) amended by Act Oct. 21, 1942, which substituted "\$7" for "\$6".

Subsec. (e) added by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, which substituted "\$8" for "\$5".

Effective Date of 1951 Amendment. Amendments of this section by Act Oct. 20, 1951, as effective on the first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 1650 of this title.

Effective Date of 1949 Amendment. Section 7 of Act Aug. 23, 1949, provided that: "The amendments made by this

Act shall take effect on the first day of the first month which begins six months or more after the date of the enactment of this Act [Aug. 23, 1949]."

Effective Date of 1948 Amendment. Section 3 of Act June 30, 1948, provided that: "The amendment made by this Act [to this section] shall take effect on the first day of the first month which begins at least ten days after the date of the enactment of this Act [June 30, 1948]."

Effective Date of 1944 Amendment. Act Feb. 25, 1944, § 308(b), was made effective on the first day of the first month which began more than 10 days after the enactment of this Act by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after, the date of enactment of that Act, by section 521(b) thereof.

Tax Refunds on Fermented Liquors Brought In from Foreign Trade Zones after April 1, 1954. Tax credits or refunds on fermented liquors brought in from foreign trade zones on or after April 1, 1954, see note under section 2000 of this title.

Fermented Liquors in Foreign Trade Zones at Time of Tax Increase. Collection of all taxes on fermented liquors which were in foreign trade zones at time of effective date of tax increase made by Act Oct. 20, 1951, and subsequently received in customs territory of United States, see note under section 2000 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Acts Aug. 23, 1949, 1949 U.S.Code Cong.Service, p. 1842; June 30, 1948, 1948 U.S.Code Cong. Service, p. 2233.

§ 3151. Repealed. Aug. 23, 1949, c. 498, § 6, 63 Stat. 626.

Historical Note

Effective Date. Repeal of section by Act Aug. 23, 1949, c. 498, § 6, 63 Stat. 626, effective as of the first day of the first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Section Prior to Repeal:

“§ 3151. Tax-paid stamps and permits

“(a) **Supply.** The Commissioner shall cause to be prepared, for the payment of such tax, suitable stamps denoting the amount of tax required to be paid on the hogsheds, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquors (and shall also cause to be prepared suitable permits for the purpose hereinafter mentioned), and shall furnish the same to the collectors,

who shall each be required to keep on hand at all times a sufficient supply of permits and a supply of stamps equal in amount to two months' sales thereof, if there be any brewery or brewery warehouse in his district; and such stamps shall be sold, and permits granted and delivered by such collectors, only to the brewers of their district, respectively.

“(b) **Collector's account.** Such collectors shall keep an account of the number of permits delivered and of the number and value of the stamps sold by them to each brewer.

“(c) Transfer of duties

“For transfer of powers and duties of Commissioner and his agents, see section 3170.

“53 Stat. 366.”

§ 3152. Other provisions relating to stamps

(a) Affixing and canceling tax-paid stamps

Every brewer shall affix, upon the spigot-hole in the head of every hogshhead, barrel, or keg in which any fermented liquor is contained, when sold or removed from such brewery or warehouse (except in case of removal under permit, as hereinafter provided), a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the hogshhead, barrel, or keg is tapped, in case it is tapped through the other spigot-hole (of which there shall be but two, one in the head and one in the side), and shall also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial¹ letters thereof, and the date when canceled: *Provided, however,* That the Commissioner may, in his discretion, authorize the use of such other tapping devices or faucets as will permit the affixing and destruction of stamps in a manner consistent with the protection of the revenue.

(b) Issue for restamping

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of fermented liquors which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(c) Authority to discontinue export stamps

The Commissioner, with the approval of the Secretary, is authorized to discontinue the use of export fermented-liquor stamps whenever in his judgment the interests of the Government will be subserved thereby.

(d) General stamp provisions

For general provisions relating to stamps, see subchapter A of chapter 28.

(e) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 366, amended Aug. 23, 1949, c. 498, § 2, 63 Stat. 624.

¹ So in original. Probably should read “initial”.

Historical Note

1949 Amendment. Act Aug. 23, 1949, amended section by striking out former subsecs. (a) and (c) and relettering subsecs. (b) and (d)-(g) to be subsecs. (a)-(e), respectively.

Effective Date of 1949 Amendment. Amendment of section by Act Aug. 23, 1949, effective as of the first day of the first month which begins six months or

more after Aug. 23, 1949, see note set out under section 3150 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 23, 1949, see 1949 U.S. Code Cong. Service, p. 1342.

§ 3153. Removals free of tax

(a) From brewery to warehouse under permit. Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection district, or in another collection district, but to no other place, malt liquor of his own manufacture, known as lager beer, in quantities of not less than six barrels, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore mentioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as provided in section 3152(b).

And said permit must be affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as the Commissioner may prescribe, and under the same penalties and liabilities as provided in section 3159(d).

(b) From brewery or warehouse for export. Fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner, with the approval of the Secretary, may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported.

(c) For manufacturing purposes when unfit for beverage use. When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

(d) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 367, amended Aug. 23, 1949, c. 498, § 6, 63 Stat. 626.

Historical Note

1949 Amendment. Subsec. (a) amended by Act Aug. 23, 1949, which repealed first sentence of second par. as it was inconsistent with the provisions of section 3150(b) (2), (3) of this title.

Effective Date of 1949 Amendment. Amendment of section by Act Aug. 23, 1949, effective as of the first day of the first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 23, 1949, see 1949 U.S.Code Cong.Service, p. 1842.

§ 3154. Repealed. Aug. 23, 1949, c. 498, § 6, 63 Stat. 626.

Historical Note

Effective Date. Repeal of section by Act Aug. 23, 1949, c. 498, § 6, 63 Stat. 626, effective as of the first day of the first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Saving Clause. Section 6 of Act Aug. 23, 1949, c. 498, § 63 Stat. 626, provided in part: "That section 3154 shall continue in effect as to any claim accruing thereunder prior to the effective date of this Act [Aug. 23, 1949]."

Section Prior to Repeal:

"§ 3154. Refunds and credits

"(a) Allowance

"(1) **Unsalable products.** The Commissioner shall make refund or in lieu thereof, if he so elects, allow credit to a brewer in the amount of tax paid by such brewer on any beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by such brewer which has become unsalable by reason of its condition, upon the filing of a claim therefor by the brewer and proof by him to the satisfaction of the Commissioner that such beer, lager beer, ale, porter, or other similar fermented malt liquor (A) was fully tax-paid, (B) was lawfully removed from his brewery to his bottling house on or after March 22, 1933, (C) never was removed from such bottling house, except in the process of destruction or for return to the brewery, (D) had become unsalable without fraud, connivance, or collusion on his part, and (E) was destroyed by him in such bottling house in the presence of a representative of the Bureau of Internal Revenue, or was returned from such bottling house to the brewery in which made for use therein as brewing material.

"(2) **Loss.** The Commissioner shall make refund, or in lieu thereof, if he so elects, allow credit to a brewer in the amount of tax paid by such brewer on any beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by such brewer which was lost in his bottling house through breakage or leakage or in the process of filling, capping, pasteurizing, or labeling, upon the

filing of a claim therefor by the brewer and proof by him to the satisfaction of the Commissioner that such beer, lager beer, ale, porter, or other similar fermented malt liquor was fully tax-paid and that no refund or credit was made or allowed therefor under paragraph (1) to this subsection. Refund or credit under this paragraph for such loss during any calendar month shall not exceed an amount equal to 2½ per centum of the tax paid by him on all beer, lager beer, ale, porter, or other similar fermented malt liquor removed by him during such calendar month from his brewery to his bottling house.

"(b) **Time for filing claim.** No claim under the provisions of subsection (a) shall be allowed unless filed within ninety days after the close of the month within which such destruction or return to the brewery for use as brewing material, or loss, occurred.

"(c) **Credit by stamp.** The Commissioner is authorized to issue to the brewer to whom a credit is allowed pursuant to this section stamps in an amount equal to such credit, for use by him in the payment of the tax upon beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by him.

"(d) **Rules and regulations.** The Commissioner, with the approval of the Secretary, is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

"(e) Transfer of duties

"For transfer of powers and duties of Commissioner and his agents, see section 3170.

"53 Stat. 368, amended July 3, 1948, c. 829, §§ 1-3, 62 Stat. 1250."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act July 3, 1948, see 1948 U.S.Code Cong.Service, p. 2337.

§ 3155. Requirements on brewers

(a) Notice of business. Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Commissioner a notice in writing and in the form prescribed by the Commissioner, with the approval of the Secretary. Such notice shall set forth (a) the name and residence of the brewer, and the names and residences of all such persons interested or to be interested in the business, directly or indirectly, as the Commissioner shall prescribe, (b) the precise place where the business is to be carried on, including a description of

the premises on which the brewery is situated, the title of the brewer to the premises, and the name of the owner thereof, and (c) such additional particulars as the Commissioner shall prescribe as necessary for the protection of the revenue.

(b) **Bonds.** Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in a penal sum equal to the amount of the tax on fermented malt liquor which, in the opinion of the Commissioner, said brewer will be liable to pay during any one month: *Provided*, That the penal sum of any such bond shall not exceed \$100,000 nor be less than \$1,000. The bond shall be conditioned that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, in the manner required by law, a book which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid. Once in every four years, or whenever required so to do by the Commissioner, or such officer as may be designated by the Commissioner, the brewer shall execute a new bond in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval.

(c) **Books and monthly statement.** Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt.

And he shall render to the collector, or the proper deputy collector, on or before the 10th day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law.

Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

(d) **Monthly verification of entries in books.** The entries made in such books shall, on or before the 10th day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows:

"I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors

brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by ———, in the county of ———; and, further, that I have no knowledge of any matter or thing required by law to be stated in said entries which has been omitted therefrom."

And the owner, agent, or superintendent aforesaid shall also, in case the original entries made in his book were not made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid:

"I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true; and that I have taken all the means in my power to make them so."

(e) **Stamping and monthly report of retail sales.** Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, or kegs in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, or kegs in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

(f) **Branding name of manufacturer and place of manufacture on containers.** Every brewer shall, by branding, mark or cause to be marked upon every hoghead, barrel, or keg containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of \$50 for each cask or other vessel from which the mark is so removed or defaced: *Provided*, That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

(g) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 368.

§ 3156. Permit to operate brewery temporarily at another place

(a) **Requirements.** Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident to any brewery therein by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 370.

§ 3157. Bottling fermented liquors

(a) **Requirements.** Every person who withdraws any fermented malt liquor from any hogshead, barrel, or keg upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented malt liquor in any brewery or other place in which fermented malt liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of \$500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however,* That this section shall not be construed to prevent the transfer of any unfermented, partially fermented, or fermented malt liquors from any of the vats or tanks in any brewery by way of a pipe line or other conduit to another building or place on the brewery premises for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, meters, and gages, or other utensils or apparatus, either in the brewery or in the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner, subject to the approval of the Secretary: *Provided further,* That the tax imposed by law on fermented malt liquor shall be paid on all bottled fermented malt liquor at the time of removal for consumption or sale, in such manner as may be prescribed by regulations pursuant to section 3150(b) (2). And any violation of the rules and regulations prescribed by the Commissioner, with the approval of the Secretary, in pursuance of these provisions shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented malt liquor through a pipe line or conduit, with the intent to defraud the revenue, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

(b) **Rules and regulations.** The Commissioner is hereby authorized, with the approval of the Secretary, to make all rules and regulations necessary to carry out the provisions of this section.

(c) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 370, amended Aug. 23, 1949, c. 498, § 3, 63 Stat. 624.

Historical Note

1949 Amendment. Subsec. (a) amended by Act Aug. 23, 1949, to provide for the transfer of unfermented, partially fermented, or fermented malt liquor from the brewery to another building or place on the brewery premises for the sole purpose of being bottled and to provide for payment of the tax on bottled fermented malt liquor at the time of removal for consumption or sale.

Effective Date of 1949 Amendment. Amendment of section by Act Aug. 23, 1949, effective as of the first day of the

first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 23, 1949, see 1949 U.S.Code Cong.Service, p. 1842.

§ 3158. Brewery premises

The brewery premises shall consist of the land and buildings described in the brewer's notice and shall be used solely for the purpose of manufacturing beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 per centum of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts; of

bottling fermented malt liquors and cereal beverages as hereinafter provided; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of storing bottles, packages, and supplies necessary or incidental to all such manufacture: *Provided*, That undelivered tax-paid fermented malt liquor in stamped barrels or kegs returned to a brewery may be temporarily stored therein, subject to such conditions and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The bottling of fermented malt liquors and cereal beverages on the brewery premises shall be conducted only in the brewery bottling house which shall be located on such premises. The brewery bottling house shall be separated from the brewery in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The brewery bottling house shall be used solely for the purpose of bottling beer, lager beer, ale, porter, and similar fermented malt liquors, and cereal beverages containing less than one-half of 1 per centum of alcohol by volume; and for the storage of bottles, tools and supplies necessary or incidental to the manufacture or bottling of fermented malt liquor and cereal beverages. Notwithstanding the foregoing provisions, where any such brewery premises or brewery bottling house was, on June 26, 1936, being used by any brewer for purposes other than those herein described, or the brewery bottling house was, on such date, being used for the bottling of soft drinks, the use of the brewery and bottling-house premises for such purposes may be continued by such brewer. The brewery bottling house of any brewery shall not be used for the bottling of the product of any other brewery. Any brewer who uses his brewery or bottling house contrary to the provisions of this subsection shall be fined not more than \$50 with respect to each day upon which any such use occurs. 53 Stat. 371, amended Aug. 23, 1949, c. 498, § 4, 63 Stat. 625.

Historical Note

1949 Amendment. Act Aug. 23, 1949, amended section to authorize the bottling of fermented malt liquors and cereal beverages on the brewery premises.

Effective Date of 1949 Amendment. Amendment of section by Act Aug. 23, 1949, effective as of the first day of the first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 23, 1949, see 1949 U.S.Code Cong.Service, p. 1842.

§ 3159. Penalties and forfeitures

(a) **Evasion of tax or noncompliance with requirements on brewers.** Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades or attempts to evade the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall—

(1) **Forfeitures.** Forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and

(2) **Penalties.** Be liable to a penalty of not less than \$500 nor more than \$1,000, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year.

(b) **Neglect to keep books or furnish accounts.** Every brewer who neglects to keep books or refuses to furnish the account and duplicate

thereof as provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of \$300.

(c) **Flagrant and willful removal of malt liquors without tax payment.** For flagrant and willful removal of taxable malt liquors for consumption or sale, without payment of tax thereon, all the right, title, and interest of each person, who has knowingly suffered or permitted such removal or has connived at the same, in the lands and buildings constituting the brewery premises and bottling house shall be forfeited by a proceeding in rem in the District Court of the United States having jurisdiction thereof.

(d) **Fraud or neglect in affixing or canceling stamps.** Every brewer who refuses or neglects to affix and cancel, in the manner provided under section 3152(b), the stamps required by law, or who affixes a false or fraudulent stamp, or knowingly permits the same to be done, shall pay a penalty of \$100 for each hogshead, barrel, or keg on which such omission or fraud occurs, and be imprisoned not more than one year.

(e) **Sale, removal, or receipt without proper stamp or permit.** Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined \$100 and imprisoned for not more than one year.

(f) **Withdrawal from improperly stamped containers or without destroying stamps, penalty.** Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined \$100 and imprisoned not more than one year.

(g) **Counterfeiting stamps and permits and trafficking in used stamps, penalty.** Every person who makes, sells, or uses any false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to reuse such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for fermented liquors, shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

(h) **Possession with tax not paid, forfeiture.** The ownership or possession by any person of any fermented liquor after its sale or removal from the brewery or warehouse, or other place where it was made, upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted.

And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal

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from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

(i) **Removal or defacement of stamps by others than the owner.** Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of \$50 for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

(j) **Fraudulent removal of bottled fermented malt liquors.** Any brewer or other person who removes or in any way aids in the removal from any brewery or brewery bottling house of any bottled fermented malt liquors on which the required tax has not been paid shall be fined \$100 and imprisoned for not more than one year.

(k) **Intentional removal or defacement of manufacturer's marks on containers**

For penalty imposed for intentional removal or defacement of manufacturer's marks required upon a hogshead, barrel, keg, or other vessel containing fermented liquor, see section 3155(f).

(l) **Violations of provisions relating to bottling**

For penalties and forfeitures imposed for violating provisions relating to bottling of fermented liquors, see section 3157.

(m) **Other violations**

For penalty and forfeiture imposed upon wholesale liquor dealers for committing offenses not specifically covered by law, see section 2806(g). 53 Stat. 371, amended Aug. 23, 1949, c. 498, § 5, 63 Stat. 625.

Historical Note

1949 Amendment. Former subsecs. (j)-(l) relettered (k)-(m) and new subsec. (j) added by Act Aug. 23, 1949.

Effective Date of 1949 Amendment. Amendment of section by Act Aug. 23, 1949, effective as of the first day of the first month which begins six months or more after Aug. 23, 1949, see note set out under section 3150 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1899 to date, see volumes "Title 28—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 23, 1949, see 1949 U.S. Code Cong. Service, p. 1842.

§ 3160. Gallon defined

The word "gallon," wherever used in the internal revenue law, relating to beer, lager beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine gallon, the liquid measure containing two hundred and thirty-one cubic inches. 53 Stat. 373.

SUBCHAPTER E.—MISCELLANEOUS GENERAL PROVISIONS

§ 3170. Transfer and delegation of powers

The Secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer, employee, or agent of the Treasury Department, any of the rights, privileges, powers, duties, and protection conferred or imposed upon the Secretary, or any officer or employee of the Treasury Department, by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession, or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol. 53 Stat. 373, amended Mar. 17, 1941, c. 21, § 1, 55 Stat. 45, eff. Feb. 11, 1939.

Historical Note

1941 Amendment. Act Mar. 17, 1941, amended section by striking out "or" preceding "by any law".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3171. Records, statements, and returns

(a) **Requirements.** Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 373.

§ 3172. Discretionary method for collecting tax

(a) **Power of Commissioner.** Whether or not the method of collecting any tax imposed by this chapter is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 374.

§ 3173. Penalties and forfeitures

(a) **Removal or transportation of liquors or wines under improper brands.** Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of \$500.

(b) **Other violations**

(1) Any person required to pay, or to collect, account for and pay over any tax on distilled spirits, wines, or fermented malt liquors, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(2) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

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(3) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: *Provided, however,* That no penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612, or of section 2801(f) or 3043, or for any offense for which a penalty has been recovered under section 2806(e).

(4) The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(c) Possession of devices for emitting gas, smoke, etc.; explosives and firearms

(1) Whoever, when violating any law of the United States, or of any Territory or possession of the United States, or of the District of Columbia, in regard to the manufacture, taxation, or transportation of or traffic in distilled spirits, wines, or fermented malt liquors, or when aiding in any such violation, has in his possession or in his control any device capable of causing emission of smoke, gas, or fumes, and which may be used for the purpose of hindering, delaying, or preventing pursuit or capture, any explosive, or any firearm (as defined in section 2733), except a machine gun, or a shotgun or rifle having a barrel of less than eighteen inches in length, shall be fined not more than \$5,000 or be imprisoned for not more than ten years, or both, and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession or control of such device, firearm, or explosive.

(2) Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun or rifle having a barrel of less than eighteen inches in length, shall be punished by imprisonment for not more than twenty years; and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession and control of such machine gun, shotgun, or rifle.

(3) Every such firearm or device for emitting gas, smoke, or fumes, and every such explosive, machine gun, shotgun, or rifle, in the possession or control of any person when violating any such law, shall be seized and shall be forfeited and disposed of in the manner provided by section 2730.

(4) As used in this subsection the term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger.

(d) Return on bond of vessel or vehicle seized for violation; discretion of court; definitions. Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter, may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof.

As used in this subsection the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air. 53 Stat. 374.

§ 3174. Territorial extent of law

The internal revenue laws imposing taxes on distilled spirits and fermented liquors shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not. 53 Stat. 375.

§ 3175. Other laws applicable

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. 53 Stat. 375.

§ 3176. Rules and regulations

(a) **Power of Commissioner.** The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(b) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agent, see section 3170: 53 Stat. 375.

§ 3177. Manufacturing bonded warehouses

(a) **Establishment and use.** All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class six: *Provided*, That such manufacturer shall first give satisfactory bonds to the collector for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary from persons allowed bonded warehouses.

(b) **Materials for manufacture**

(1) **Materials exportable free of tax.** Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge as aforesaid shall be received as a voucher for the manufacture of such articles.

(2) **Imported materials.** Any materials imported into the United States may, under such rules as the Secretary may prescribe, and under the direction of the proper officer, be removed in original packages from on ship-board, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be

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taken therefrom except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond, or return of the amount of foreign import duties.

(c) **Supervision.** All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

(d) Removal

(1) **In general.** Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary, without being charged with duty, and without having a stamp affixed thereto.

(2) **To Pacific coast.** Any article manufactured in a bonded warehouse established under subsection (a), and situated in any of the Atlantic States, may be removed therefrom for transportation to a customs bonded warehouse at any port on the Pacific coast of the United States, for the purpose only of being exported therefrom, under such regulations and upon the execution of such bonds or other security as the Secretary may prescribe.

(3) Cross references

For special provisions relating to removal of manufactures of imported materials, see paragraph (2) of subsection (b).

For provisions relating specifically to withdrawal of distilled spirits from distillery warehouses for use in manufacturing bonded warehouses, see section 2891.

53 Stat. 375.

§ 3178. Special provisions relating to distilled spirits and wines rectified in bonded manufacturing warehouses

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of section 311 of the Tariff Act of 1930, 46 Stat. 692 (U.S.C., Title 19, sec. 1311), and may be withdrawn as provided in such section, and likewise for shipment in bond to Puerto Rico, subject to the provisions of such section, and under such regulations as the Secretary may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of such section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier. 53 Stat. 377.

§ 3179. Exemption and drawback in case of exportation

(a) **Exemption.** Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

(b) **Drawback.** Upon the exportation of distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, and which are contained in any cask or package or in bottles packed in cases or other containers, there shall be allowed, under regulations to be prescribed by the Commissioner, with the

approval of the Secretary, a drawback equal in amount to the tax found to have been paid on such distilled spirits and wines: *Provided*, That such distilled spirits and wines have been packaged or bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations governing the determination and payment of drawback of internal-revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as shall be deemed necessary.

(c) **Transfer of duties**

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 377, amended July 14, 1947, c. 245, 61 Stat. 319.

Historical Note

1947 Amendment. Subsec (b) amended by Act July 14, 1947, which extended drawback provisions to distilled spirits and wines in casks and packages as well as bottles and transferred the regulatory powers in last sentence from the Secretary to the Commissioner, with the approval of the Secretary.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act July 14, 1947, see 1947 U.S.Code Cong Service, p. 1290.

§ 3180. **Distilleries erected prior to July 20, 1868**

(a) **Requirements.** In any case where the owner of a distillery or distilling apparatus, erected prior to July 20, 1868, has only an estate for a term of years or other estate less than fee-simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection where the title was then, and has continued to be, in litigation; or in any case of such prior erection where such owner is possessed of the fee, but encumbered with a mortgage executed and duly recorded prior to July 20, 1868, and not due, or in any case of such prior erection where the fee is held by a femme-covert, minor, person of unsound mind, or other person incapable of giving consent, as required in section 2815(b) (1) (B), the value of such lot or tract of land, together with the building and distilling apparatus, shall be appraised in the manner to be prescribed by the Commissioner pursuant to section 2815(b) (1) (C); and the officer designated by the Commissioner may, at the discretion of the Commissioner, be authorized to accept, in lieu of the said written consent, the bond of such distiller, in such form as the Commissioner may prescribe, with not less than two personal sureties or one corporate surety, conditioned that in case the distillery, distilling apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond. Said sureties shall be residents of the collection district or county, or of an adjoining county in the same State in which the distillery is situated, and owners of unencumbered real estate in said district or county, or adjoining county, equal to such appraised value, and the penal sum of said bond shall be equal to the appraised value of said lot or tract of land together with the buildings and distilling apparatus.

(b) **Bond.** The officer designated by the Commissioner may at any time, at the discretion of the Commissioner, accept such bond as is authorized to be given by the distiller in lieu of the written consent of the owner of the fee in the case of a distillery erected prior to July 20, 1868, not-

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withstanding such distillery has since then been increased by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller himself in fee; such bond to be for and in respect of such addition only, if the distillery be one which the distiller owns in fee or in respect to which he has procured the written consent of the owner of the fee or other encumbrance, otherwise to be for and in respect of the entire distillery as increased by such addition.

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 377.

§ 3181. Cross references

For provision authorizing and directing officers of internal revenue to withhold release of distilled spirits from bottling plants unless a certificate of label approval has been obtained or the application of the bottler for exemption has been granted, see section 5(e) of the Federal Alcohol Administration Act, as amended by section 505 of the Liquor Tax Administration Act, c. 830, 49 Stat. 1966 (U.S.C., Title 27, Sup. II, § 205(e)).

For power of marshals or deputy marshals to arrest persons operating illicit distilleries, see section 9 of the act of March 1, 1879, c. 125, 20 Stat. 341 (U.S.C., Title 18, § 593).

For authority to issue warrants of arrest for violation of internal revenue laws upon the sworn complaint of district attorneys, collectors, deputy collectors, revenue agents, or private citizens, see the act of March 2, 1901, c. 814, 31 Stat. 956 (U.S.C., Title 18, § 594).

53 Stat. 378.

Historical Note

References in Text. Section 9 of the act of March 1, 1879, c. 125, 20 Stat. 341 (U.S.C., Title 18, § 593), referred to in the second paragraph, was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and is now covered by rule 5(a) of the Federal Rules of Criminal Procedure, 18 U.S.C.A.

Act of March 2, 1901, c. 814, 31 Stat. 956 (U.S.C., Title 18, § 594), referred to in the third paragraph, was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and is now covered by section 3045 of Title 18, Crimes and Criminal Procedure.

§ 3182. Volatile fruit-flavor concentrates

(a) Exemption. The provisions of this chapter (other than sections 2810, 2819, and 2823 and other than sections 2827 to 2830, both inclusive) shall not be applicable with respect to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if—

“(1) such concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of such concentrate; and

“(2) such concentrate is rendered unfit for use as a beverage before removal from the place of manufacture; and

“(3) the manufacturer thereof keeps such records, renders such reports, files such bonds, and complies with such other rules and regulations with respect to the production, removal, sale, transportation, and use of such concentrate and of the mash or juice from which such concentrate is produced, as the Commissioner, with the approval of the Secretary, may prescribe as necessary for the protection of the revenues imposed by this chapter.

(b) Control after tax-free manufacture. If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 per centum or more of alcohol by volume, which is manufactured free from tax under the provisions of subsection (a), is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, includ-

ing those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax. Added Aug. 17, 1949, c. 453, 63 Stat. 611.

Historical Note

Legislative History: For legislative history and purpose of Act Aug. 17, 1949, see 1949 U.S.Code Cong.Service, p. 1823.

§ 3183. National emergency transfers of distilled spirits

(a) **Transfers permitted.** Under regulations prescribed by the Secretary, distilled spirits of any proof including alcohol (the term "distilled spirits" or "spirits" as hereinafter used in this section shall include alcohol) may be removed in bond in approved containers and pipelines from any registered distillery including a registered fruit distillery (such registered distillery and registered fruit distillery hereinafter referred to as "distillery"), internal revenue bonded warehouse, industrial alcohol plant or industrial alcohol bonded warehouse to any distillery, internal revenue bonded warehouse, industrial alcohol plant or industrial alcohol bonded warehouse for redistillation, or storage, or any other purpose deemed necessary to meet the requirements of the national defense: *Provided*, That any such distilled spirits may be stored in approved tanks in, or constituting a part of, any internal revenue bonded warehouse or industrial alcohol bonded warehouse: *Provided further*, That any such distilled spirits removed to an industrial alcohol plant or industrial alcohol bonded warehouse may be withdrawn therefrom if of a proof of one hundred and sixty degrees or more for any tax-free purpose, or upon payment of tax for any purpose, authorized by part II of subchapter C; and any such distilled spirits removed to a distillery or internal revenue bonded warehouse may be withdrawn therefrom if of a proof of one hundred and sixty degrees or more for any tax-free purpose authorized by part II of subchapter C or for any purpose authorized in the case of like spirits produced at a distillery: *Provided further*, That any such distilled spirits, upon removal from a distillery or internal revenue bonded warehouse for transfer to an industrial alcohol plant or industrial alcohol bonded warehouse or for any tax-free purpose authorized by part II of subchapter C, shall be subject to the provisions of part II of subchapter C: *Provided further*, That when any distilled spirits are removed under the provisions of this section to a distillery, industrial alcohol plant, or industrial alcohol bonded warehouse, the tax liability of the proprietor of the distillery, internal revenue bonded warehouse, industrial alcohol plant, or industrial alcohol bonded warehouse from which the spirits are removed, and the liens on such distillery, industrial alcohol plant, or industrial alcohol bonded warehouse, shall cease; and at and from the time the distilled spirits leave the distillery, internal revenue bonded warehouse, industrial alcohol plant, or industrial alcohol bonded warehouse the tax shall be the liability of the proprietor of, and the liens shall be transferred to the premises of, the distillery, industrial alcohol plant, or industrial alcohol bonded warehouse to which the distilled spirits are transferred: *Provided further*, That when any distilled spirits are removed under the provisions of this section to an internal revenue bonded warehouse the proprietor of such warehouse shall be primarily liable for the tax on the spirits at and from the time the spirits leave the premises from which transferred: *Provided further*, That the provisions of section 2901 of the Internal Revenue Code shall apply in respect of losses of any distilled spirits transferred, or removed for transfer, under this section to a distillery or internal revenue bonded warehouse; and the provisions of section 3113 of the code shall apply in respect of losses of any distilled spirits transferred, or removed for 2870 of the Internal Revenue Code shall not apply to the production or transfer, under this section to an industrial alcohol plant or industrial alcohol bonded warehouse: *And provided further*, That sections 2836 and

2870 of the Internal Revenue Code shall not apply to the production or redistillation and removal of any such spirits; nor shall sections 2800 (a) (5) and 3250 (f) of the code apply to the redistillation or to the mingling at a distillery or an internal revenue bonded warehouse or in the course of removal, of any such spirits.

(b) **Exemption from statutory requirements.** The Secretary may temporarily exempt proprietors of distilleries, internal revenue bonded warehouses, industrial alcohol plants, or industrial alcohol bonded warehouses from any provision of the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, whenever in his judgment it may seem expedient to do so to meet the requirements of the national defense. Whenever the Secretary shall exercise the authority conferred by this subsection he may prescribe such regulations as may be necessary to accomplish the purpose which caused him to grant the exemption.

(c) **Termination of section.** The authority conferred upon the Secretary by this section shall expire five years from the date of enactment of this section. Added July 11, 1951, c. 221, 65 Stat. 116.

Historical Note

References in Text. The Internal Revenue Code and the code wherever referred to in the text of section refer to this title.

Legislative History: For legislative history and purpose of Act July 11, 1951, see 1951 U.S. Code Cong. Service, p. 1567.

SUBCHAPTER F.—DEFENSE TAX FOR FIVE YEARS

Subchapter F was added by Act June 25, 1940, 11:45 a. m., E.S.T., c. 419, Title II, § 214, 54 Stat. 525.

§ 3190. Defense tax for five years

In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
3030(a) (1) (A) ----	Still wines -----	5 cents --	6 cents.
3030(a) (1) (A) ----	Still wines -----	15 cents	18 cents.
3030(a) (1) (A) ----	Still wines -----	25 cents .	30 cents.
3030(a) (2) -----	Sparkling wines -----	2½ cents	3 cents.
3030(a) (2) -----	Sparkling wines -----	1¼ cents	1½ cents.
3030(a) (2) -----	Liqueurs, cordials, etc. ----	1¼ cents	1½ cents.
3150(a) -----	Fermented malt liquors ----	\$5 -----	\$6.

Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 214, 54 Stat. 525.

Historical Note

Termination of Rates. Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, §§ 521(b), 536, 550(a), 55 Stat. 708, 710, 715, provided for the termination of the applicability of the rates specified in this section as follows:

"[§ 521.] (b) The rates specified in subsection (a) [of Act Sept. 20, 1941, § 521, affecting sections 1700, 1801, 1802, 1804, 1806, 2000, 2700, 3150, 3250, 3407, 3411, 3412, 3413, 3460, 3481 and 3482 of this title] shall be applicable only with re-

spect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a), section 2004, and section 3190 of the Internal Revenue Code shall not apply with respect to such period."

"[§ 536.] The amendments made by this Part [Act Sept. 20, 1941, Title V, Part III, §§ 531-536, affecting sections 1807, 1850, 2800, 2887, 3030, 3192, and 3400 of this title] shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code shall not apply with respect to such period.

This Part shall take effect on October 1, 1941."

"[§ 550.] (a) The amendments made by this Part [Act Sept. 20, 1941, Title V, Part IV, §§ 541-550, affecting Title 26, Internal Revenue Code, §§ 1700, 1701, 1710, 1712, 1715, 1716, 3403, 3404, 3405, 3409, 3441, 3465, 3466; and Title 16, Conservation, §§ 18e, 407d] shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941."

§ 3191. Floor stocks tax on fermented malt liquors

(a) **Floor stocks tax.** Upon all fermented malt liquors upon which the internal-revenue tax imposed by law has been paid, and which on July 1, 1940, are held by any person and intended for sale there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such articles by section 3190. The tax imposed by this subsection shall not apply to the retail stocks of fermented malt liquors held by a person on premises as to which such person has incurred occupational tax as a retail dealer in liquors or a retail dealer in malt liquors for the period beginning on July 1, 1940, and as to which no other occupational tax with respect to dealing in distilled spirits, wines, or malt liquors, has been incurred by such person for a period beginning on such date.

(b) **Returns.** Every person required by subsection (a) to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner with the approval of the Secretary shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than February 1, 1941, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3150(a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a). Added June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 214, 54 Stat. 525.

§ 3192. Floor stocks tax on wines

(a) **Floor stocks tax.** Upon all wines upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax (over the defense tax rates) made applicable to such articles by section 534 of the Revenue Act of 1941.

(b) **Returns.** Every person required by subsection (a) to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a). Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 534(c), 55 Stat. 709.

Historical Note

References in Text. Section 534 of the Revenue Act of 1941, referred to in subsec (a), added this section and amended section 3030(a) (1) (A), (a) (2) of this title.

Effective Date. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 536 thereof.

§ 3193. 1942 Floor stocks tax on wines

(a) **Floor stocks tax.** Upon all wines upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title VI of the Revenue Act of 1942 are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax made applicable to such articles by section 604 of the Revenue Act of 1942.

(b) **Returns.** Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by subsection (a) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of Title VI of the Revenue Act of 1942 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title VI of the Revenue Act of 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a). Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 604(c), 56 Stat. 973.

Historical Note

References in Text. Section 604 of the Revenue Act of 1942, referred to in subsec. (a), added this section and amended section 3030(a) (1) (A), (a) (2) of this title.

Effective date of Title VI of the Revenue Act of 1942, referred to in subssecs. (a) and (b), commenced on the first day of the first month which began more than

10 days after Oct. 21, 1942, 4:30 p. m., E.W.T. See "Effective Date" note under this section.

Effective Date. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W. T., by section 601 thereof.

§ 3194. 1944 Floor stocks tax on wines

(a) **Floor stocks tax.** Upon all wines upon which the internal-revenue tax imposed by law has been paid, and which on the effective date of Title III of the Revenue Act of 1943 are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax made applicable to such articles by section 302(a) of the Revenue Act of 1943.

(b) **Returns.** Under such regulations as the Commissioner with the approval of the Secretary shall prescribe, every person required by subsection (a) to pay any floor stocks tax shall, on or before the end of the

thirtieth day following the effective date of Title III of the Revenue Act of 1943 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of Title III of the Revenue Act of 1943, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this section, be applicable with respect to the floor stocks tax imposed by subsection (a). Added Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 308(c), 58 Stat. 68.

Historical Note

References in Text. Section 302(a) of the Revenue Act of 1943, referred to in subsec. (a), amended section 1650, added sections 1651-1653 and added former sections 1654, 1655 of this title.

Effective date of Title III of the Revenue Act of 1943, referred to in subsecs. (a) and (b), commenced on the first day of the first month which began more

than 10 days after Feb. 25, 1944, 12:49 p. m., E.W.T. See "Effective Date" note under this section.

Effective Date. Act Feb. 25, 1944, was made effective on the first day of the first month which began more than 10 days after the date of this Act by section 301 thereof.

§ 3195. 1951 Floor stocks tax on wines

(a) **[Rate of tax]**¹ Upon all wines upon which the internal revenue tax imposed by law has been paid, and which on the effective date of section 452(a) of the Revenue Act of 1951 are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax made applicable to such articles by section 452(a) of the Revenue Act of 1951.

(b) **Returns.** Under such regulations as the Secretary shall prescribe, every person required by subsection (a) to pay any floor stocks tax shall, on or before the end of the thirtieth day following the effective date of section 452(a) of the Revenue Act of 1951 make a return and shall, on or before the first day of the third month following such effective date, pay such tax. Payment of the tax shown to be due may be extended to a date not later than the first day of the tenth month following the effective date of section 452(a) of the Revenue Act of 1951, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Secretary may prescribe.

(c) **Laws applicable.** All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this section, be applicable with respect to the floor stocks tax imposed by subsection (a). Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 452(b), 65 Stat. 526.

¹ Catchline supplied by Editor.

Historical Note

References in Text. Section "452(a) of the Revenue Act of 1951", referred to in subsecs. (a) and (b), is section 452(a) of Act Oct. 20, 1951, which section amended subsecs. (a) (1) (A) and (a) (2) of section 3030 of this title as described in notes under such section. For effective date of such amendments, see note under section 1650 of this title.

Effective Date. Section to take effect on the first day of the first month which

begins more than 10 days after Oct. 20, 1951, see note under section 1650 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

CHAPTER 27.—OCCUPATIONAL TAXES

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SUBCHAPTER A.—SPECIAL PROVISIONS

PART I.—OLEOMARGARINE

§§ 3200-3202. Repealed. Mar. 16, 1950, c. 61, § 2, 64 Stat. 20, eff. July 1, 1950.

Historical Note

Refund of Occupational Tax. Section 2 of Act Mar. 16, 1950, c. 61, 64 Stat. 20, provided in part that: "Such repeal shall not be construed to entitle any manufacturer, wholesaler, or retailer to a refund of any occupational tax heretofore paid."

Sections Prior to Repeal:

"§ 3200. Tax

"(a) **Manufacturers.** Manufacturers of oleomargarine shall pay a special tax of \$600.

"(b) **Wholesale dealers**

"(1) **In general.** Wholesale dealers in oleomargarine shall pay a special tax of \$480: *Provided*, That wholesale dealers who vend no other oleomargarine or butterine except that upon which a tax of one-fourth of 1 cent per pound is imposed by section 2301(a) shall pay \$200.

"(2) **Manufacturers selling at wholesale.** Any manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells only oleomargarine of his own production, at the place of manufacture, in the original packages to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in oleomargarine on account of such sales.

"(c) **Retail dealers.** Retail dealers in oleomargarine shall pay a special tax of \$48: *Provided*, That such retail dealers as vend no other oleomargarine or but-

terine except that upon which is imposed by section 2301(a) a tax of one-fourth of 1 cent per pound, shall pay \$6. 53 Stat. 380.

"§ 3201. **Penalties**

"(a) **Manufacturers.** Every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000; and

"(b) **Wholesale dealers.** Every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$500 nor more than \$2,000; and

"(c) **Retail dealers.** Every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$50 nor more than \$500 for each and every offense. 53 Stat. 380.

"§ 3202. **Definitions**

"For definitions of the following, see the sections enumerated below: Oleomargarine, section 2300; Manufacturers, section 2302(a); Wholesale dealers, section 2303(a); Retail dealers, section 2304 (a).

"53 Stat. 380."

PART II.—ADULTERATED AND PROCESS OR RENOVATED BUTTER

§ 3206. Tax

(a) Manufacturers

(1) Process or renovated butter. Manufacturers of process or renovated butter shall pay a special tax of \$50 a year; and

(2) Adulterated butter. Manufacturers of adulterated butter shall pay a special tax of \$600 a year.

(b) Wholesale dealers in adulterated butter. Wholesale dealers in adulterated butter shall pay a special tax of \$480 a year.

(c) Retail dealers in adulterated butter. Retail dealers in adulterated butter shall pay a special tax of \$48 a year. 53 Stat. 381.

§ 3207. Penalties

(a) Manufacturers of process, renovated, or adulterated butter. Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000; and

(b) Dealers in adulterated butter. Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$50 nor more than \$500 for each offense. 53 Stat. 381.

§ 3208. Definitions

For definitions of the following, see the sections enumerated below: Butter, section 2320(a); Adulterated butter, section 2320(b); Process or renovated butter, section 2320(c); Manufacturers of process, or renovated, or adulterated butter, section 2322(a); Dealers in adulterated butter, section 2323(a); Retail dealers in adulterated butter, section 2323(b).

53 Stat. 381.

PART III.—FILLED CHEESE

§ 3210. Tax

(a) Manufacturers. Manufacturers of filled cheese shall pay a special tax of \$400 a year for each and every factory.

(b) Wholesale dealers

(1) In general. Wholesale dealers in filled cheese shall pay a special tax of \$250 a year.

(2) Manufacturers selling at wholesale. Any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

(c) Retail dealers. Retail dealers in filled cheese shall pay a special tax of \$12 a year. 53 Stat. 381.

§ 3211. Penalties

(a) Manufacturers. Every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$400 and not more than \$3,000; and

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(b) **Wholesale dealers.** Every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$250 nor more than \$1,000; and

(c) **Retail dealers.** Every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than \$40 nor more than \$500 for each and every offense. 53 Stat. 381.

§ 3212. Definitions

For definitions of the following, see the sections enumerated below: Cheese, section 2350(a); Filled cheese, section 2350(b); Manufacturers, section 2352(a); Wholesale dealers, section 2353(a); Retail dealers, section 2354(a).
53 Stat. 382.

PART IV.—MIXED FLOUR

§§ 3215–3217. Repealed. Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 619, 56 Stat. 979.

Historical Note

Effective Date. The repeal of sections 3215–3217 by Act Oct. 21, 1942, was made effective on the first day of the first month which begins more than ten days after Oct. 21, 1942, by section 601 of said act.

Sections Prior to Repeal:

“§ 3215. Tax

“(a) **Rate.** Every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of \$12 a year.

“(b) **Payment and posting.** The tax imposed by subsection (a) shall be paid and posted in accordance with the provisions of section 3273(b), and subject to the fines and penalties imposed by sec-

tion 3274 for any violation thereof. 53 Stat. 382.

“§ 3216: Penalties

“(a) Posting and payment of tax

“For penalties imposed for violation of provisions relating to the posting and payment of the tax, see section 3215(b).

“(b) Second offenses

“For penalties imposed for second offenses, see section 2386(h).

“(c) Recovery

“For recovery of penalties, see section 2387.

“53 Stat. 382.

“§ 3217. Definition

“For definition of mixed flour, see section 2380.

“53 Stat. 382.”

PART V.—NARCOTICS

§ 3220. Tax

On or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away narcotic drugs shall pay the special taxes hereinafter provided. Every person upon first engaging in any of such activities shall immediately pay the proportionate part of the tax for the period ending on the following June 30.

(a) **Importers, manufacturers, or producers.** Importers, manufacturers, producers, or compounders, lawfully entitled to import, manufacture, produce, or compound narcotic drugs, \$24 per annum;

(b) **Wholesale dealers.** Wholesale dealers, lawfully entitled to sell and deal in narcotic drugs, \$12 per annum;

(c) **Retail dealers.** Retail dealers, lawfully entitled to sell and deal in narcotic drugs, \$3 per annum;

(d) **Physicians, dentists, veterinary surgeons, and other practitioners.** Physicians, dentists, veterinary surgeons, and other practitioners, law-

fully entitled to distribute, dispense, give away, or administer narcotic drugs to patients upon whom they in the course of their professional practice are in attendance, \$1 per annum or fraction thereof during which they engage in any of such activities;

(e) **Persons engaged in research, instruction, or analysis.** Persons not registered as an importer, manufacturer, producer, or compounder and lawfully entitled to obtain and use in a laboratory any of the aforesaid drugs for the purpose of research, instruction, or analysis shall pay \$1 per annum, but such persons shall keep such special records relating to receipt, disposal, and stocks on hand of narcotic drugs as the Commissioner of Narcotics, with the approval of the Secretary, may by regulation require. Such special records shall be open at all times to the inspection of any duly authorized officer, employee, or agent of the Treasury Department.

(f) **Persons not otherwise taxed**

For a tax of \$1 a year on persons not otherwise taxed, dispensing preparations and remedies of limited narcotic content, see section 2551(a).

(g) **Persons in Canal Zone**

For authority of the President to issue Executive orders providing for the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, distribute, sell, or give away narcotic drugs, see section 2564(b).

53 Stat. 382, amended July 1, 1944, c. 377, § 6, 58 Stat. 721; Mar. 8, 1946, c. 81, § 6, 60 Stat. 39; Aug. 8, 1953, c. 394, §§ 3(b), 5, 6, 67 Stat. 505, 506.

Historical Note

1953 Amendments. First par. amended by Act Aug. 8, 1953, § 5, which substituted "narcotic drugs" for "opium, coca leaves, isonipecaine, or opiate, or any compound, manufacture, salt, derivative, or preparation thereof".

Subsecs. (a)-(e) amended by Act Aug. 8, 1953, § 6, which substituted "narcotic drugs" for "any of the aforesaid drugs" and for "the aforesaid drugs", wherever those words appeared.

Subsec. (g) amended by Act Aug. 1953, § 3(b), which substituted "narcotic drugs" for "opium or coca leaves, their salts, derivatives, or preparations".

1946 Amendment. First par. amended by Act Mar. 8, 1946, which struck out "or" between "coca leaves, or isonipecaine" and inserted "or opiate," following "isonipecaine,".

1944 Amendment. First par. amended by Act July 1, 1944, which struck out "or" following "gives away opium" and inserted in lieu thereof a comma, and inserted "or isonipecaine" following "coca leaves,".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2277. See, also, Act Mar. 8, 1946, 1946 U.S. Code Cong. Service, p. 1083.

§ 3221. Registration

(a) **Requirements.** On or before July 1 of each year every person who engages in any of the activities enumerated in section 3220 shall register with the collector of the district his name or style, place of business and place or places where such business is to be carried on, and every person upon first engaging in any such activities shall immediately make like registration.

(b) **Transfer of duties**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 383.

§ 3222. Exemption from tax and registration

(a) **Employees.** No employee of any person who has registered and paid special tax as required in this part acting within the scope of his

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employment, shall be required to register and pay special tax provided by sections 3220 and 3221.

(b) **Government and State officials.** Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business herein described, shall not be required to register, nor pay special tax, but their right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

(c) Cross references

(1) Canal Zone

For authority of the President to issue Executive orders providing for the registration of all persons in the Canal Zone who produce, import, compound, deal in, dispense, distribute, sell or give away narcotic drugs, see section 2564.

(2) Transfer of duties

For authority of the Secretary to delegate such powers and duties, see subchapter D.

53 Stat. 383, amended Aug. 8, 1953, c. 394, § 3(b), 67 Stat. 505.

Historical Note

1953 Amendment. Subsec. (c) (1) amended by Act Aug. 8, 1953, which substituted "narcotic drugs" for "opium or coca leaves, their salts, derivatives, or preparations."

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2277.

§ 3223. Possession of stamped packages as evidence of tax liability

For possession of original stamped packages as prima facie evidence of liability to special tax, see section 2553(a).

53 Stat. 383.

§ 3224. Unlawful acts in case of failure to register and pay special tax

(a) **Trafficking.** It shall be unlawful for any person required to register under the provisions of this part or section 2551(a) to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away narcotic drugs without having registered and paid the special tax as imposed by this part, or section 2551(a).

(b) **Transportation.** Except as otherwise provided in this subsection, it shall be unlawful for any person to send, ship, carry, or deliver any of narcotic drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, into any other State or Territory or the District of Columbia, or any insular possession of the United States. Nothing contained in this subsection shall apply—

(1) to any person who shall have registered and paid the special tax as required by sections 3220 and 3221;

(2) to common carriers engaged in transporting narcotic drugs;

(3) to any employee acting within the scope of his employment for any person who shall have registered and paid the special tax as required by sections 3220 and 3221, or to any contract carrier or other agent acting within the scope of his agency for such registered person;

(4) to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, veterinarian, or other practitioner required to register under the terms of this part or section 2551(a) and employed to prescribe for the particular patient receiving such drug;

(5) to any person carrying any narcotic drug or compound of a narcotic drug which has been obtained by the person from a registered dealer in pursuance of a written or oral prescription referred to in section 2554 (c) (2), issued for legitimate medical uses by a physician, dentist, veterinary surgeon, or other practitioner, registered under section 3221, if the bottle or other container in which such drug or compound of a narcotic drug is carried bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person issuing such prescription.¹

(6) to any person carrying any such drug which has been obtained by the person as a patient from a registered physician, dentist, or other practitioner in the course of his professional practice if such drug is dispensed to the patient for legitimate medical purposes; or

(7) to any United States, State, county, municipal, district, Territorial, or insular officer or official acting within the scope of his official duties.

(c) Possession. It shall be unlawful for any person who has not registered and paid the special tax as provided for by this part or section 2551 (a), to have in his possession or under his control narcotic drugs; and such possession or control shall be presumptive evidence of a violation of this subsection and subsection (a), and also a violation of the provisions of sections 3220 and 3221: *Provided*, That this subsection shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this part or section 2551(a), having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of narcotic drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this part or section 2551(a); or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this part and subchapter A of chapter 23; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this part or subchapter A of chapter 23; and the burden of proof of any such exemption shall be upon the defendant. 53 Stat. 383, amended Sept. 21, 1950, c. 974, 64 Stat. 898; Aug. 8, 1953, c. 394, § 6, 67 Stat. 506; Aug. 31, 1954, c. 1147, § 5, 68 Stat. 1002.

¹ So in original.

Historical Note

1954 Amendment. Subsec. (b) (5) amended by Aug. 31, 1954, to exclude drugs obtained by oral prescription.

1953 Amendment. Act Aug. 8, 1953 amended section by substituting "narcotic drugs" for "any of the aforesaid drugs" and for "the aforesaid drugs", wherever those words appeared.

1950 Amendment. Subsec. (b) amended by Act Sept. 21, 1950, to prohibit the unauthorized transportation of narcotics from one State to another and to make it unnecessary to prove that delivery was

made or intended to be made to a person in another State.

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2277. Act Sept. 21, 1951, see 1950 U.S. Code Cong. Service, p. 3785.

§ 3225. Penalties

For penalties for violating or failing to comply with any of the provisions of this part, see section 2557(b) (1).

53 Stat. 384.

§ 3226. List of special taxpayers

(a) **Supply.** Collectors are authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special taxpayers under the provisions of this part or section 2551(a), upon payment of a fee of \$1 for each 100 names or fraction thereof in the copy so requested.

(b) **Transfer of duties**

For authority of the Secretary to delegate such powers and duties, see subchapter D.
53 Stat. 384.

§ 3227. Other laws applicable

(a) All provisions of law relating to special taxes, as far as necessary shall be extended and made applicable to the special tax imposed by this part.

(b) All laws relating to the assessment, collection, remission, and refund of internal revenue taxes, including section 3761, so far as applicable to and not inconsistent with the provisions of this part and subchapter A of chapter 23, shall be extended and made applicable to the special taxes imposed by this part and section 2551(a). 53 Stat. 384.

§ 3228. Definitions

(a) **Person.** The word "person" as used in this part and subchapter A of chapter 23 shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

(b) **Importer, manufacturer, or producer.** Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution narcotic drugs shall be deemed to be an importer, manufacturer, or producer.

(c) **Wholesale dealer.** Every person who sells, or offers for sale, any of said drugs in the original stamped packages as provided in section 2553(a) shall be deemed a wholesale dealer.

(d) **Retail dealer.** Every person who sells or dispenses from original stamped packages as provided in section 2553(a) shall be deemed a retail dealer: *Provided*, That the office, or if none, the residence, of any person shall be considered for the purposes of this part and subchapter A of chapter 23 his place of business.

(e) **Isonipecaïne.** The word "isonipecaïne" as used in this part shall mean any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated.

(f) **Opiate.** The word "opiate" as used in this part shall mean any drug (as defined in the Federal Food, Drug, and Cosmetic Act) found by the Secretary of the Treasury, after due notice and opportunity for public hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, and proclaimed by the President to have been so found by the Secretary. The Secretary is authorized to issue necessary rules and regulations for carrying out the provisions of this subsection, and to confer or impose upon any officer or employee of the Treasury Department, as he shall designate or appoint, the duty of conducting any hearing authorized hereunder.

(g) **Territory.** As used in this part and subchapter A of chapter 23, (1) the word "Territory" shall include the Trust Territory of the Pacific Islands, and (2) the word "Territorial" shall reflect such inclusion.

(g) ¹ **Narcotic drugs.** The words "narcotic drugs" as used in this part and subchapter A of chapter 23, shall mean any of the following, whether

produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium, isonipecaine, coca leaves, and opiate;
- (2) Any compound, manufacture, salt, derivative, or preparation of opium, isonipecaine, coca leaves, or opiate;
- (3) Any substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clauses (1) and (2). 53 Stat. 384, amended July 1, 1944, c. 377, § 7, 58 Stat. 721; Mar. 8, 1946, c. 81, § 1, 60 Stat. 38; Aug. 8, 1953, c. 392, § 5, 67 Stat. 500; Aug. 8, 1953, c. 394, §§ 1, 6, 7, 67 Stat. 505, 506.

¹ So in original. Probably should be "(h)".

Historical Note

References in Text. The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f), is set out as chapter 9 of Title 21, Food and Drugs.

1953 Amendment. Subsec. (b) amended by Act Aug. 8, 1953, c. 394, § 6, which substituted "narcotic drugs" for "any of the drugs mentioned in section 3220".

Subsecs. (e) and (f) amended by Act Aug. 8, 1953, c. 394, § 7, which struck out "and subchapter A of chapter 23" in each such subsection.

Subsec. (g), "Territory", added by Act Aug. 8, 1953, c. 392.

Subsec. (g), "Narcotic drugs", added by Act Aug. 8, 1953, c. 394, § 1. Probably should be subsec. (h).

1946 Amendment. Subsec. (f) added by Act Mar. 8, 1946.

1944 Amendment. Subsec. (e) added by Act July 1, 1944.

Effective Date of 1953 Amendment. Amendment of section by Act Aug. 8, 1953, c. 392, as effective the first day of the third month which begins more than ten days after Aug. 8, 1953, see note set out under section 2563.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Acts Aug. 8, 1953, cc. 392, 394, see 1953 U.S. Code Cong. and Adm. News, pp. 2255, 2277. See, also, Act Mar. 8, 1946, 1946 U.S. Code Cong. Service, p. 1083.

PART VI.—MARIHUANA

§ 3230. Tax

(a) **Liability and time for payment of tax.** Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall (1) before engaging in any of the above-mentioned activities, and (2) thereafter, on or before July 1 of each year, pay the following special taxes respectively:

(1) **Importers, manufacturers, and compounders.** Importers, manufacturers, and compounders of marihuana, \$24 per year.

(2) **Producers.** Producers of marihuana (except those included within subdivision (4) of this subsection), \$1 per year, or fraction thereof, during which they engage in such activity.

(3) **Physicians, dentists, veterinary surgeons, and other practitioners.** Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, \$1 per year or fraction thereof during which they engage in any of such activities.

(4) **Persons engaged in research, instruction, or analysis.** Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose,

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\$1 per year, or fraction thereof, during which he engages in such activities.

(5) **Persons not otherwise taxed.** Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, \$3 per year: *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by subdivisions (1) and (2) of this subsection, may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section.

(6) **Millers.** Any person who at a mill manufactures or produces from the plant *Cannabis sativa* L. any fiber or fiber products \$1 per year or fraction thereof during which he engages in such activities.

(b) **Computation of tax.** Where a tax under subdivision (1) or (5) of subsection (a) is payable on July 1 of any year it shall be computed for one year; where any such tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

(c) **Liability in case of activities in more than one place.** In the event that any person subject to a tax imposed by this section engages in any of the activities enumerated in subsection (a) of this section at more than one place, such person shall pay the tax with respect to each such place.

(d) **Liability in case of more than one activity by same person at same time.** Except as otherwise provided, whenever more than one of the activities enumerated in subsection (a) of this section is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed. 53 Stat. 385, amended Mar. 8, 1946, c. 81, § 10(b), 60 Stat. 40.

Historical Note

1946 Amendment. Subsec. (a) amended by Act Mar. 8, 1946, which added subpar. (6).

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see

volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Mar. 8, 1946, see 1946 U.S. Code Cong. Service, p. 1083.

§ 3231. Registration

(a) **In general.** Any person subject to the tax imposed by section 3230 shall, upon payment of such tax, register his name or style and his place or places of business with the collector of the district in which such place or places of business are located.

(b) **Special requirements for millers.** The Secretary shall not permit the registration of any person under this section as a person required to pay the tax imposed by section 3230(a) (6), unless in the opinion of the Secretary such person (or if a corporation, each officer thereof) is a person of good moral character and unless in the opinion of the Secretary such person is a person of suitable financial standing, intends to engage in good faith in the business of manufacturing or producing fiber or fiber products from the plant *Cannabis sativa* L. on a commercial basis, and is not seeking registration under this section for the purpose of facilitating the unlawful diversion of marihuana. Any person who is registered under this section and has paid the tax imposed by section 3230(a) (6) shall afford agents of the Bureau of Narcotics ready access at all times to any part of the premises of the mill or other premises of such person and the right to inspect any and all books, papers, records, or documents connected with the activities of such person in dealing in, manufacturing, and processing *Cannabis sativa* L. and fiber or fiber products thereof, and the

handling of marihuana. The Secretary may cancel or may refuse to renew, after notice and opportunity for hearing, the registration of any such person if he finds that such person has not complied or is not complying with the requirements of this subsection, or if he finds that grounds exist which would justify the refusal to permit the original registration of such person under this section. 53 Stat. 386, amended Mar. 8, 1946, c. 81, § 10 (c), 60 Stat. 40.

Historical Note

1946 Amendment. Act Mar. 8, 1946, amended section by inserting "(a) In General.—" preceding "Any" and by adding subsec. (b).

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see

volumes "Title 26—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act Mar. 8, 1946, see 1946 U.S. Code Cong. Service, p. 1083.

§ 3232. Exemption from tax and registration

(a) **Employees.** No employee of any person who has paid the special tax and registered, as required by sections 3230 and 3231, acting within the scope of his employment, shall be required to register and pay such special tax.

(b) Government and state officials

(1) **In general.** An officer or employee of the United States, any State, Territory, the District of Columbia, or insular possession, or political subdivision, who, in the exercise of his official duties, engages in any of the activities enumerated in section 3230 shall not be required to register or pay the special tax, but his right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

(2) Cross reference

For authority of the President to issue executive orders providing for the registration and the imposition of special taxes upon persons in the Virgin Islands, see section 2603(b).
53 Stat. 386.

§ 3233. Returns

(a) **Registrants.** Any person who shall be registered under the provisions of section 3231 in any internal-revenue district shall, whenever required so to do by the collector of the district, render to the collector a true and correct statement or return, verified by affidavits, setting forth the quantity of marihuana received or harvested by him during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine. If such person is not solely a producer, he shall set forth in such statement or return the names of the persons from whom said marihuana was received, the quantity in each instance received from such persons, and the date when received.

(b) Persons liable for tax

For general requirement as to records, statements and returns in the case of persons liable for tax, see section 2594.
53 Stat. 386.

§ 3234. Unlawful acts in case of failure to register and pay special tax

(a) Trafficking

(1) **Liability.** It shall be unlawful for any person required to register and pay the special tax under the provisions of sections 3230 and 3231 to import, manufacture, produce, compound, sell, deal in, dispense, distribute, prescribe, administer, or give away marihuana without having so registered and paid such tax.

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(2) **Enforcement of liability.** In any suit or proceeding to enforce the liability imposed by this section or sections 3230 and 3231, if proof is made that marihuana was at any time growing upon land under the control of the defendant, such proof shall be presumptive evidence that at such time the defendant was a producer and liable under this section as well as under sections 3230 and 3231.

(b) **Transportation.** It shall be unlawful for any person who shall not have paid the special tax and registered, as required by sections 3230 and 3231, to send, ship, carry, transport, or deliver any marihuana within any Territory, the District of Columbia, or any insular possession, or from any State, Territory, the District of Columbia, any insular possession of the United States, or the Canal Zone, into any other State, Territory, the District of Columbia, or insular possession of the United States: *Provided*, That nothing contained in this section shall apply to any common carrier engaged in transporting marihuana; or to any employee of any person who shall have registered and paid the special tax as required by sections 3230 and 3231 while acting within the scope of his employment; or to any person who shall deliver marihuana which has been prescribed or dispensed by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, who has been employed to prescribe for the particular patient receiving such marihuana; or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties. 53 Stat. 386.

§ 3235. Penalties

For penalties for violating or failing to comply with any of the provisions of this part, see section 2557(b) (1). 53 Stat. 387, amended Nov. 2, 1951, c. 666, § 4, 65 Stat. 768.

Historical Note

1951 Amendment. Act Nov. 2, 1951 amended section by substituting text referring to section 2557(b) (1) of this title for penalties, in lieu of former note referring therefor to section 2596 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3236. List of special taxpayers

Collectors are authorized to furnish, upon written request, to any person a certified copy of the names of any or all persons who may be listed in their respective collection districts as special taxpayers under section 3230, upon payment of a fee of \$1 for each one hundred of such names or fraction thereof upon such copy so requested. 53 Stat. 387.

§ 3237. Other laws applicable

All provisions of law (including penalties) applicable in respect of the taxes imposed by sections 2550 and 3220 shall, insofar as not inconsistent with this part, be applicable in respect of the taxes imposed by this part. 53 Stat. 387.

§ 3238. Definitions

When used in this part and subchapter C of chapter 23.

(a) **Person.** The term "person" means an individual, a partnership, trust, association, company, or corporation and includes an officer or employee of a trust, association, company, or corporation, or a member or employee of a partnership, who, as such officer, employee, or member, is under a duty to perform any act in respect of which any violation of this part or subchapter C of chapter 23 occurs.

(b) **Marihuana.** The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(c) **Producer.** The term "producer" means any person who (1) plants, cultivates, or in any way facilitates the natural growth of marihuana; or (2) harvests and transfers or makes use of marihuana.

(d) **Transfer or transferred.** The term "transfer" or "transferred" means any type of disposition resulting in a change of possession but shall not include a transfer to a common carrier for the purpose of transporting marihuana. 53 Stat. 387.

§ 3239. Cross references

For provisions authorizing seizure and confiscation of marihuana for persons violating this part, see section 2508 of chapter 23.

For provisions giving the Secretary authority to prescribe rules and regulations to enforce this part, see section 2599 of chapter 23.

For authority of the Secretary to delegate the powers conferred on him by this part to officers and employees of the Treasury Department, see section 2600 of chapter 23.

For the territorial extent of this part, see section 2002 of chapter 23.

For administration of the special taxes in Puerto Rico, see section 2603(a) of chapter 23.

For burden of proof in the case of exemptions in this part, see section 2597 of chapter 23.

53 Stat. 387.

PART VII.—LIQUOR

§ 3250. Tax

(a) Wholesale dealers in liquors

(1) **In general.** Wholesale dealers in liquors shall pay a special tax of \$200.

(2) Wholesale dealers in liquors dealing in wines or wines and malt liquors

For the designation of wholesale dealers in liquors as wholesale dealers in wines or wholesale dealers in wines and malt liquors, and the issuance of the appropriate special tax stamps, see section 3254(b).

(3) **Retailers selling at wholesale.** Except as provided in section 3254 (c) (2), a qualified retail dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in liquors.

(4) **Distillers selling at wholesale.** No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale dealer in liquors on account of such sales.

(5) Retail dealers in liquidation

For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251(c).

(6) Creditors, fiduciaries, officers of court, and partners

For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251(a) and (b).

(b) Retail dealers in liquors

(1) **In general.** Except as provided in paragraph (3) of subsection (e), retail dealers in liquors shall pay a special tax of \$50.

(2) **Retail drug stores or pharmacies.** The tax required to be paid by paragraph (1) shall, in the case of a retail drug store or pharmacy making sales of liquors through a duly licensed pharmacist, be designated as a "medicinal spirits stamp tax."

(3) Retail dealers in liquors dealing in wines or wines and malt liquors

For the designation of retail dealers in liquors as retail dealers in wines and malt liquors, and the issuance of appropriate special tax stamps, see section 3254(c) (1).

(4) **Wholesalers selling at retail.** A qualified wholesale dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of less than five wine gallons without incurring liability to special tax as a retail dealer in liquors.

(5) Creditors, fiduciaries, officers of court, and partners

For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251(a) and (b).

(c) Brewers

(1) **In general.** Brewers shall pay \$110 in respect of each brewery: *Provided*, That any brewer of less than 500 barrels a year shall pay the sum of \$55.

(2) Cross reference

For effect upon special tax of purchases or sales of malt liquors by brewers, see paragraph (3) of subsection (d).

(d) Wholesale dealers in malt liquors

(1) **In general.** Wholesale dealers in malt liquors shall pay special tax of \$100.

(2) **Retailers selling at wholesale.** A qualified retail dealer in malt liquors may not sell such liquors in quantities of five gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in malt liquors. No retail dealer in malt liquors shall be held to be a wholesale dealer in malt liquors solely by reason of sales of five gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

(3) **Brewers selling at wholesale.** No brewer shall be obliged to pay special tax as a dealer by reason of selling in the original stamped hogsheads, barrels, or kegs, whether at the place of manufacture or elsewhere, malt liquors manufactured by him, or purchased and procured by him in his own hogsheads, barrels, or kegs, under provisions of section 3155(f), but the quantity of malt liquors so purchased shall be included in calculating the liability to brewers' special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same.

(4) Retail dealers in liquidation

For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251(c).

(e) Retail dealers in malt liquors

(1) **In general.** Retail dealers in malt liquors shall pay a special tax of \$22.

(2) **Wholesalers selling at retail.** A qualified wholesale dealer in malt liquors may not sell such liquors in quantities of less than five gallons without incurring liability to special tax as a retail dealer in malt liquors.

(8) Persons selling to entertainments and outings

Notwithstanding the provisions of this part, each person making sales of fermented malt liquor or wine to the members, guests, or patrons of bona-fide fairs, reunions, picnics, carnivals, or other similar outings, and each fraternal, civic, church, labor, charitable, benevolent, or ex-service

men's organization making sales of fermented malt liquor or wine on the occasion¹ of any kind of entertainment, dance, picnic, bazaar, or festival held by it, if such person or organization is not otherwise engaged in business as a wholesale or retail liquor dealer or as a wholesale or retail malt liquor dealer, shall pay, before any such sales are made and in lieu of the special taxes imposed by paragraph (1) of this subsection and of subsection (b) a special tax of \$2.20 as a retail dealer in malt liquors, if fermented malt liquor only is sold, or a special tax of \$2.20 as a retail dealer in liquors if wine only, or wine and fermented malt liquor only, are sold for each calendar month in which any such sales are made.

(4) **Brewers selling at retail.** No collection of special tax as a retail dealer in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eighth-barrel packages.

(5) **Other provisions**

For other provisions relating to brewers as dealers, see paragraph (3) of subsection (d).

(6) **Transfer of duties**

For transfer of the powers and duties of the Commissioner and his agents, see section 3170.

(f) **Rectifiers**

(1) **Rate of tax.** Rectifiers of distilled spirits shall pay a special tax of \$220: *Provided*, That any rectifier of less than 500 barrels a year, counting 40 gallons of proof spirits to the barrel, shall pay \$110.

(2) **Prohibited premises.** No officer shall collect any special tax for rectifying distilled spirits on any premises distant less than six hundred feet (or less than the distance permitted by the Secretary of the Treasury in the particular case) in a direct line from any distillery. And every officer who collects any special tax in violation of this section shall be liable to a penalty of \$5,000 for each offense.

(g) **Winemakers.** Nothing in this chapter or chapter 26 shall be construed to impose a special tax upon winemakers who have qualified as such under the internal-revenue laws and regulations, and who sell wines of their own production where the same are made or at the general business office of such winemaker: *Provided*, That no winemaker shall have more than one place of business for the sale of such wine that shall be exempt from the special tax.

(h) **Apothecaries.** No special tax shall be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

(i) **Manufacturers of chemicals and flavoring extracts.** No special tax shall be imposed upon manufacturing chemists or flavoring-extract manufacturers for recovering tax-paid alcohol or spirituous liquors from dregs or marc of percolation, or extraction, if such recovered alcohol or spirituous liquors be again used in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used.

(j) **Manufacturers of stills**

(1) **In general.** Manufacturers of stills shall each pay a special tax of \$55, and \$22 for each still or worm for distilling made by him.

(2) **Distillers manufacturing own stills.** Paragraph (1) of this subsection and section 3254(h) shall not apply to distillers in registered distilleries who manufacture for their own use wooden stills, but each of said distillers shall give notice to the collector of the district in which his distillery is located of each still manufactured before the same is used.

(3) **Drawback.** Upon all stills manufactured for export, and actually exported, there shall be allowed a drawback, where the tax thereon

has been paid, under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(k) Cross reference

For transfer of the powers and duties of the Commissioner and his agents, see section 3170.

(l) Manufacturers or producers of designated nonbeverage products

(1) In general. Any person using distilled spirits produced in a domestic registered distillery or industrial alcohol plant and fully tax-paid in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, upon payment of a special tax per annum, shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products and as hereinafter provided for.

(2) [Rate of tax.]² Such special tax per annum shall be graduated in amount as follows: (a) for total annual withdrawals not exceeding 25 proof gallons, \$25 per annum; (b) for total annual withdrawals not exceeding 50 proof gallons, \$50 per annum; (c) for total annual withdrawals of 50 proof gallons or more, \$100 per annum.

(3) Requirements. Such person shall register annually with the Commissioner; keep such books and records as may be necessary to establish the fact that distilled spirits purchased by him and fully tax-paid were used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which were unfit for use for beverage purposes; and shall be subject to such rules and regulations in relation thereto as the Commissioner, with the approval of the Secretary, shall prescribe to secure the Treasury of the United States against frauds.

(4) Investigative powers of Commissioner. The Commissioner, for the purpose of ascertaining the correctness of any claim filed under this subsection is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be alleged in the claim, and may require the attendance of the person filing the claim or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to any matter covered by the claim, with power to administer oaths to such person or persons.

(5) Drawback. In the case of distilled spirits tax-paid and used as provided in this subsection, a drawback shall be allowed—

(A) at the rate of \$6 on each proof gallon upon which tax is paid at a rate of \$9 per proof gallon prior to the effective date of section 462 of the Revenue Act of 1951,

(B) at the rate of \$9.50 on each proof gallon upon which tax is paid at a rate of \$10.50 per proof gallon on and after the effective date of section 462 of the Revenue Act of 1951, and

(C) at the rate of \$8 on each proof gallon upon which tax is paid at a rate of \$9 per proof gallon after March 31, 1955.

Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary: *Provided, however,* That the Secretary may

require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked upon filing of notice thereof with the Secretary. No claim under this subsection shall be allowed unless filed with the Secretary within the three months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subsection. 53 Stat. 388, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (11)-(17), 55 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 602(f), 56 Stat. 972; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 309(d), 58 Stat. 68; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 461, 462(a), 65 Stat. 528; Aug. 15, 1953, c. 508, § 1, 67 Stat. 591; Mar. 31, 1954, c. 126, Title VI, § 601(b) (4), 68 Stat. 46.

1 So in original. Probably should read "occasion."

2 Catchline supplied by Editor.

Historical Note

References in Text. "Section 462 of the Revenue Act of 1951", referred to in subsecs. (1) (5) (A) (B), is section 462 of Act Oct. 20, 1951, c. 521, Title IV, Pt. VI, 65 Stat. 528. Subsec. (a) of such section 462 amended said subsecs. (1) (5) (A) (B) as described in 1951 amendment note below. Subsec. (b) of such section 462 prescribed the effective date for said amendments, and is also set out in note below.

1954 Amendment. Subsec. (1) (5) (C) amended by Act Mar. 31, 1954, which substituted "March 31, 1955" for "March 31, 1954".

1953 Amendment. Subsection (2) (5) amended by Act Aug. 15, 1953 which granted persons entitled to drawback with respect to designated nonbeverage products the right to elect in writing to receive such drawback on a monthly instead of on a quarterly basis.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 461(a), which substituted "\$200" in lieu of "\$110".

Subsec. (b) (1) amended by Act Oct. 20, 1951, § 461(b), which substituted "\$50" in lieu of "\$27.50".

Subsec. (d) (1) amended by Act Oct. 20, 1951, § 461(c), which substituted "\$100" in lieu of "\$55".

Subsec. (1) (5) amended by Act Oct. 20, 1951, § 462(a), which substituted the rates prescribed in pars. (A), (B) and (C) in lieu of rate of \$3.75 formerly specified in such section.

1944 Amendment. Subsec. (1) (1) amended by Act Feb. 25, 1944, which omitted "and are sold or otherwise transferred for use for other than beverage purposes upon payment of a special tax per annum, shall be eligible for drawback as hereinafter provided for." and inserted in lieu thereof "upon payment of * * * provided for."

1942 Amendment. Subsec. (1) added by Act Oct. 21, 1942.

1941 Amendment. Act Sept. 20, 1941, increased the rates specified in this section, as follows:

Subsec. (a) (1), from \$100 to \$110;

Subsec. (b) (1), from \$25 to \$27.50;

Subsec. (c) (1), from \$100 to \$110, and from \$50 to \$55;

Subsec. (d) (1), from \$50 to \$55;

Subsec. (e) (1), from \$20 to \$22;

Subsec. (e) (3), from \$2 to \$2.20;

Subsec. (f) (1), from \$200 to \$220, and from \$100 to \$110;

Subsec. (j), from \$50 to \$55, and from \$20 to \$22.

Effective Date of 1953 Amendment. Section 2 of Act Aug. 15, 1953 provided that the amendments to subsec. (1) (5) by said Act "shall apply only with respect to claims for drawback with respect to distilled spirits which, on or after the first day of the first quarter after the quarter in which this Act [Aug. 15, 1953] is enacted, are used in the manufacture or production of nonbeverage products."

Effective Date of 1951 Amendments. Section 464 of Act Oct. 20, 1951, provided that the amendments to subsecs. (a) (1), (b) (1), and (d) (1) of this section and section 3207 of this title "shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of such Act [October 20, 1951]. In the case of the year beginning July 1, 1951, where the trade or business on which the tax is imposed was commenced prior to the first day of the month specified in the preceding sentence, the increase in tax resulting from such amendments shall be reckoned proportionately from the first day of such month to and including the thirtieth day of June following and shall be due on, and payable on or before, the last day of the month specified in the preceding sentence."

Section 462(b) of Act Oct. 20, 1951 provided that the amendments to subsec. (1)

(5) of this section, made by subsec. (a) of such section 462, should be applicable only with respect to distilled spirits used on or after the first day of the first month "which begins more than ten days after the date of the enactment of this Act [October 20, 1951]".

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on the first day of the first month which began more than 10 days after the date of the enactment of this Act, by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Tax on Distilled Spirits. Tax on distilled spirits generally, rate per proof gallon or wine gallon when below proof to be \$9 in lieu of \$10.50 on and after April 1, 1954, see section 2500(a) of this title.

Prior Increase of Drawback Rate. Section 309(b) of Act Feb. 24, 1944, as amended by section 6 of Act Mar. 11, 1947, c. 17, 61 Stat. 12 provided: "In lieu of the rate of drawback specified in section 3250(1) (5) of the Internal Revenue Code, the rate applicable with respect to the period beginning with the effective date of Title III of the Revenue Act of 1943 shall be \$6.00."

Termination of Increase of Drawback Rate. The period of the increase in drawback rate provided in Act Feb. 25, 1944, c. 63, § 309(b), 58 Stat. 68, terminates on the first day of the first month which begins six months or more after the termination of hostilities of World War II, proclaimed at 12 o'clock noon of December 31, 1946, by Proc.No.2714, 12 F.R. 1, set out as note under section 601

of Appendix to Title 50, War and National Defense.

Applicability of Increase of Drawback Rate. Section 309(c) of Act Feb. 25, 1944, c. 63, Title III, 58 Stat. 68, provided as follows: "Subsection (b) [of Act Feb. 25, 1944, c. 63, Title III, § 309, 58 Stat. 68] shall be applicable only with respect to distilled spirits on which the internal revenue tax was paid at the war tax rate, or at a rate equivalent to the war tax rate, specified in section 1650 of the Internal Revenue Code."

Time for Filing Claim for Drawback. Section 309(e) of Act Feb. 25, 1944, c. 63, Title III, 58 Stat. 69, provided as follows: "Distilled spirits used prior to the effective date of this title in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, and which are not covered by any claim filed in conformity with law prior to such effective date, shall be regarded as so used during the quarter in which such effective date occurs, and the claim filed by any person for such quarter shall include the drawback claimed with respect to such distilled spirits; provided that no claim shall be allowed which was barred by any provision of any prior law."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Acts Aug. 15, 1953, 1953 U.S.Code Cong. and Adm.News, p. 2418; Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781.

§ 3251. Casual sales

(a) By creditors, fiduciaries, and officers of court. No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine-gallons.

(b) By retiring or deceased partners to incoming or remaining partners. No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm.

(c) **By retail dealers in liquidation.** The special tax of a wholesale dealer in liquors or wholesale dealer in malt liquors shall not be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors. Section 2860 shall not be held to prohibit a rectifier or liquor dealer from purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid. 53 Stat. 390.

§ 3252. Retail liquor dealers' records

(a) **Requirement.** Each retail liquor dealer shall provide at his own expense, and keep in his place of business, a record in book form, or shall keep all invoices of, and bills for, all distilled spirits, wines, and fermented malt liquors received, the quantity thereof, and from whom and the date when received.

(b) **Inspection.** Such records, invoices, and bills shall be open to inspection during the usual business hours of the retailer by Government officers upon identification and request.

(c) **Preservation.** Such records, invoices, and bills shall be kept for a period of two years after the time of the transactions to which they relate.

(d) **Penalty.** For each willful violation of the provisions hereof the retailer shall be subject to a fine of \$25. 53 Stat. 391.

§ 3253. Penalties and forfeitures for nonpayment of special tax

Any person who shall carry on the business of a brewer, rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, and willfully fails to pay the special tax as required by law, shall, for every such offense, be fined not less than \$100 nor more than \$5,000 and be imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or enclosure connected therewith and used with or constituting a part of the premises, shall be forfeited to the United States. 53 Stat. 391.

§ 3254. Definitions

(a) Distiller

For definition of distiller, see section 2809(a).

(b) **Wholesale dealer in liquors.** Except as otherwise provided, every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time, shall be regarded as a wholesale dealer in liquors: *Provided*, That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "wholesale dealer in wines" or a "wholesale dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a wholesale dealer in liquors.

(c) **Retail dealer in liquors.** Except as otherwise provided, (1) every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in less quantities than five wine-gallons to the same person at the same time, shall be regarded as a retail dealer in liquors: *Provided*, That the Commissioner may, by regulations, with

the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "retail dealer in wines" or a "retail dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a retail dealer in liquors.

(2) No retail dealer in liquors shall be held to be a wholesale dealer in liquors solely by reason of sales of five wine-gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

(d) **Brewer.** Every person who manufactures fermented liquors of any name or description, for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer.

(e) **Wholesale dealer in malt liquors.** Except as otherwise provided, every person who sells, or offers for sale, malt liquors in quantities of five gallons or more, to the same person at the same time, and who does not deal in distilled spirits or wines at wholesale, shall be regarded as a wholesale dealer in malt liquors.

(f) **Retail dealer in malt liquors.** Except as otherwise provided, every person who sells, or offers for sale, malt liquors in less quantities than five gallons to the same person at the same time, and does not deal in distilled spirits or wines, shall be regarded as a retail dealer in malt liquors.

(g) **Rectifier.** Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying: *Provided*, That nothing in this subsection or section 3250 (f) (1) shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete.

(h) **Manufacturer of stills.** Any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills. 53 Stat. 391.

§ 3255. Liability in case of business in more than one location

(a) **Retail dealers in liquors or malt liquors.** Any retail dealer in liquors or retail dealer in malt liquors whose business is such as to require him to travel from place to place in different States of the United States may, under regulations prescribed by the Commissioner, with the approval of the Secretary, procure a special-tax stamp "At Large" covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or as a retail dealer in malt liquors, as the case may be.

(b) **Dealers in liquors or malt liquors.** Nothing contained in this chapter shall prevent the issue, under such regulations as the Commissioner may prescribe, of special tax stamps to persons carrying on the business of retail dealers in liquors, or retail dealers in malt liquors,

upon passenger railroad trains or upon steamboats or other vessels engaged in the business of carrying passengers.

(c) Dealers in liquors or malt liquors making sales on purchaser dealers' premises. No wholesale or retail dealer in liquors or wholesale or retail dealer in malt liquors who has paid the special tax as such dealer shall again be required to pay special tax as such dealer on account of sales of beer, lager beer, ale, porter, or other similar fermented malt liquor to wholesale or retail dealers in liquors or wholesale or retail dealers in malt liquors consummated at the purchaser's place of business covered by the stamp issued to him to denote the payment of the special tax imposed upon such dealers. 53 Stat. 392.

PART VIII.—FIREARMS

§ 3260. Tax

(a) Rate. Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every importer, manufacturer, and dealer in firearms shall pay a special tax at the following rates:

(1) Importers or manufacturers. Importers or manufacturers, \$500 a year;

(2) Dealers other than pawnbrokers. Dealers, other than pawnbrokers, \$200 a year;

(3) Pawnbrokers. Pawnbrokers, \$300 a year:

Provided, That manufacturers and dealers in guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, guns designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types, shall pay the following taxes: Manufacturers, \$25 per year; dealers, \$1 per year.

(b) Computation of tax. Where the tax is payable on the 1st day of July in any year it shall be computed for one year; where the tax is payable on any other day it shall be computed proportionately from the 1st day of the month in which the liability to the tax accrued to the 1st day of July following. 53 Stat. 392, amended Aug. 11, 1945, c. 364, § 2, 59 Stat. 531.

Historical Note

1945 Amendment. Subsec. (a) amended by Act Aug. 11, 1945, by striking out proviso and inserting in lieu thereof a new proviso.

Effective Date of 1945 Amendment. Subsec. (b) of section 3 of Act Aug. 11, 1945, provided: "The amendment made by section 2 of this Act [subsec. (a) of this section] shall apply with respect to any tax within the scope thereof payable under section 3260(a) of the Internal Revenue Code for any taxable period commencing on or after July 1, 1945."

Method of Tax Proportionment. Section 4(d) of Act May 21, 1952, c. 320, 60 Stat. 88 provided that: "In the case of any person who is liable for a tax under any provision of section 3260(a) of the Internal Revenue Code [subsec. (a) of

this section] solely by reason of the amendments made by this Act [Act May 21, 1952] and who (prior to the effective date of these amendments) commenced the activity which makes him subject to tax under such provision, such tax shall be reckoned proportionately from the beginning of the effective date of these amendments to and including the thirtieth day of June following; and such tax shall be due on, and payable on or before, the last day of the fourth month after the month in which this Act is enacted. [May 21, 1952]."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3261

OCCUPATIONAL TAXES

§ 3261. Registration

(a) Importers, manufacturers, and dealers. Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every importer, manufacturer, and dealer in firearms shall register with the collector of internal revenue for each district in which such business is to be carried on his name or style, principal place of business, and places of business in such district.

(b) Persons in general. Every person possessing a firearm shall register, with the collector of the district in which he resides, the number or other mark identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of business or employment, and, if such person is other than a natural person, the name and home address of an executive officer thereof. No person shall be required to register under this subsection with respect to a firearm which such person acquired by transfer or importation or which such person made, if provisions of subchapter B of chapter 25 applied to such transfer, importation, or making, as the case may be, and if the provisions which applied thereto were complied with.

(c) Repealed. May 21, 1952, c. 320, § 3(f), 66 Stat. 88. 53 Stat. 393, amended May 21, 1952, c. 320, § 3(e), (f), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (b) amended by Act May 21, 1952, § 3(e), which struck out proviso relating to the exception to the registration requirement and added new sentence.

Subsec. (c) repealed by Act May 21, 1952, § 3(f). Prior to such repeal, said subsec. provided:

"(c) Presumption of possession. Whenever on trial for a violation of section 2726(a) hereof the defendant is shown to have or to have had possession of such firearm at any time after September 24, 1934, without having registered as required by subsection (b), such possession shall create a presumption that such firearm came into the possession of the defendant subsequent to July 26, 1934, but this presumption shall not be conclusive."

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first day of the fourth month following the month [May] of its enactment.

Effective Date of Required Registration. Section 4(b) of Act May 21, 1952, provided that notwithstanding the provisions of section 4(a), which provided for the effective date of amendments by said Act May 21, 1952, to be the first day of the fourth month following the month [May] of its enactment, the registration

required under this section shall commence on the first day of the second month following the month [May] of its enactment.

Exemption From Criminal Liability. Section 4(c) of Act May 21, 1952, provided that: "Nothing in subchapter B of chapter 25 of the Internal Revenue Code [subchapter B of chapter 25 of this title] or of part VIII of subchapter A of chapter 27 of the Internal Revenue Code [this part], as amended by this Act, shall impose any liability (whether criminal or otherwise) in respect of any act or failure to act occurring before the effective date specified in subsection (a), unless such liability would have existed in respect of such act or failure to act under the provisions of such subchapter B [subchapter B of chapter 27 of this title] and part VIII [this part] as they existed on the day prior to the effective date specified in subsection (a)."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act May 21, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1454.

§ 3262. Exemptions

For provisions exempting certain transfers, see section 2721. 53 Stat. 393.

§ 3263. Unlawful acts in case of failure to register and pay special tax

(a) Importation, manufacture or dealing in firearms. It shall be unlawful for any person required to register under the provisions of section

3261 to import, manufacture, or deal in firearms without having registered and paid the tax imposed by section 3260.

(b) **Transportation in interstate commerce.** It shall be unlawful for any person who is required to register as provided in section 3261(b) and who shall not have so registered, or any other person who has not in his possession a stamp-affixed order as provided in section 2723 or a stamp-affixed declaration as provided in section 2734, to ship, carry, or deliver any firearm in interstate commerce. 53 Stat. 393, amended May 21, 1952, c. 320, § 3(g), 66 Stat. 88.

Historical Note

1952 Amendment. Subsec. (b) amended by Act May 21, 1952, which made technical changes to make section conform to new section 2734 of this title.

Effective Date of 1952 Amendment. Section 4(a) of Act May 21, 1952, provided that the amendment of this section should become effective on the first

day of the fourth month following the month [May] of its enactment.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3264. Other laws applicable

For provisions relating to special taxes, and other provisions relating to the tax on narcotics made applicable to the taxes imposed by this part, see section 2731. 53 Stat. 393.

§ 3265. Definitions

For definitions of firearm, machine gun, importer, manufacturer, dealer, and other terms used in this part, see section 2733.

53 Stat. 393.

§ 3266. Transactions between registered persons

For provisions exempting dealings between registered persons in certain respects, see section 2733(d).

53 Stat. 394.

PART IX.—COIN-OPERATED AMUSEMENT AND GAMING DEVICES

Part was added by Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 555, 55 Stat. 722, which was made effective on Oct. 1, 1941, by section 558 of that Act.

§ 3267. Tax on coin-operated amusement and gaming devices

(a) **Rate.** Every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device shall pay a special tax as follows:

(1) \$10 per year in the case of a device defined in clause (1) of subsection (b);

(2) \$250 per year, in the case of a device defined in clause (2) of subsection (b); and

(3) \$10 or \$250, as the case may be, for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

(b) **Definition.** As used in this Part, the term "coin-operated amusement and gaming devices" means (1) any amusement or music machine operated by means of the insertion of a coin, token, or similar object, and (2) so-called "slot" machines which operate by means of insertion of a

coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premium, merchandise, or tokens. The term does not include bona fide vending machines in which are not incorporated gaming or amusement features. For the purposes of this section, a vending machine operated by means of the insertion of a 1 cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens shall be classified under clause (1) and not under clause (2).

(c) **Applicability of administrative provisions.** An operator of a place or premises who maintains for use or permits the use of any coin-operated device shall be considered, for the purposes of subchapter B, to be engaged in a trade or business in respect of each such device.

(d) **Effective date of tax.** With respect to the year ending June 30, 1942, no tax shall be payable under this part for any period prior to October 1, 1941. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 555, 55 Stat. 722, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 617(a, b), 56 Stat. 978; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 603(a), 64 Stat. 964; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 463, 65 Stat. 528.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, which substituted "\$250" for "\$150" in clauses (2) and (3).

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, to increase rate of tax from \$100 to \$150 per year.

1942 Amendment. Subsecs. (a) (2) and (3), and (b), amended by Act Oct. 21, 1942, which substituted "\$100" for "\$50" in pars. (2) and (3) of subsec. (a) and amended subsec. (b) in its entirety.

Effective Date of 1951 Amendment. Effective date of amendment by Act Oct. 20, 1951, see note under section 3250 of this title.

Effective Date of 1950 Amendments. Section 603(b) of Act Sept. 23, 1950, provided that the amendment of subsec. (a) should take effect on the first day of the first month which begins more than 10 days after Sept. 23, 1950.

Effective Date of 1942 Amendment. Section 617(c) of Act Oct. 21, 1942, provided as follows:

"(c) The amendments made by this section shall be first applicable as follows:

"(1) In the case of machines the rate of tax on which is increased, to the year beginning July 1, 1943.

"(2) In the case of machines not subject to tax prior to such amendments, no tax shall be payable with respect to any period before the effective date of this title [Title VI].

"(3) In the case of machines if the limitation on the amount of the prize dispensed is 5 cents, to the year beginning July 1, 1942."

The amendments made by Title VI of Act Oct. 21, 1942, of which section 617 thereof is a part, were made generally effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 553 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781. See, also, Act Sept. 23, 1950, 1950 U.S. Code Cong.Service, p. 3053.

PART X.—BOWLING ALLEYS, AND BILLIARD AND POOL TABLES

Part was added by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 555,

55 Stat. 723, which was made effective on Oct. 1, 1941, by section 553 of that Act.

§ 3268. Tax on bowling alleys, and billiard and pool tables

(a) **Rate.** Every person who operates a bowling alley, billiard room, or pool room shall pay a special tax of \$20 per year for each bowling alley, billiard table, or pool table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley, billiard room, or pool room, respectively. No tax shall be imposed under this section with respect to a billiard table or pool table in a hospital if no charge is made for the use of such table. The tax imposed under this section shall not apply for any period beginning after June 30, 1952, with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use.

(b) **Effective date of tax.** With respect to the year ending June 30, 1942, no tax shall be payable under this part for any period prior to October 1, 1941. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 566, 55 Stat. 723, amended Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 305(a), 58 Stat. 64; July 17, 1952, c. 924, § 1, 66 Stat. 752; Mar. 31, 1954, c. 126, Title V, § 504(d), 68 Stat. 42.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which substituted "\$20 per year" for "\$10 per year".

1952 Amendment. Subsec. (a) amended by Act July 17, 1952, to exclude from taxation bowling alleys and billiard and pool tables maintained exclusively for the use of the Armed Forces.

1944 Amendment. Subsec. (a) amended by Act Feb. 25, 1944, which added sentence beginning "No tax shall be," etc.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective July 1, 1944, by section 305(b) thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 553 thereof.

Termination of War tax rates. The effective period of the War tax rates provided for in section 1650 of this title, which had temporarily affected the permanent rate specified in subsec. (a) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954. See such section, and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1951 U.S. Code Cong. and Adm. News, p. 2035. See, also, Act July 17, 1952, 1952 U.S. Code Cong. and Adm. News, p. 2311.

SUBCHAPTER B.—GENERAL PROVISIONS**§ 3270. Registration**

(a) **Requirements.** Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) Cross references

For registration in case of narcotics, marihuana, and firearms, see sections 3221, 3231, and 3241, respectively.

For transfer of powers and duties of Commissioner and his agents, in case of liquor, see section 3170.

53 Stat. 394.

§ 3271. Payment of tax

(a) **Condition precedent to doing business.** No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

§ 3271

OCCUPATIONAL TAXES

(b) **Due date.** All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the latter case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid

(1) **Stamp.** All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax.

(2) Assessment

For authority of Commissioner to make assessments where the special taxes have not been duly paid by stamp, at the time and in the manner provided by law, see section 3640.

53 Stat. 394.

§ 3272. Returns

(a) **Time for filing.** It shall be the duty of the special taxpayers to render their returns with remittances to the collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, together with the remittances, not later than the last day of the month, except in cases of sickness or absence, as provided for in section 3634.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents in case of narcotics and liquor, see subchapter D of chapter 23 and section 3170.

(c) Penalties

For penalties imposed for failure to file returns or for making false or fraudulent returns, see section 3612.

53 Stat. 394.

§ 3273. Stamps

(a) **Supply.** The Commissioner is required to procure appropriate stamps for the payment of all special taxes imposed by law, including the tax on stills or worms; and the provisions of section 2802(a) and of sections 3300, 3301, and 3302, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner shall have authority to make all needful regulations relative thereto.

(b) **Posting.** Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax.

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, see subchapter D of chapter 23 and section 3170.

53 Stat. 394.

§ 3274. Penalties relating to posting of special tax stamp

Any person who shall, through negligence, fail to place and keep stamps denoting the payment of the special tax as provided in section 3273(b) shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than \$10. And where the failure to comply with the provisions of section 3273(b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed: *Provided*, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession,

or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof. 53 Stat. 395.

§ 3275. List of special taxpayers for public inspection

(a) In collector's office. Each collector shall, under regulations of the Commissioner, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality, he shall furnish a certified copy thereof, as of a public record, for which a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested, may be charged.

(b) Transfer of duties

For transfer of powers and duties of Commissioner and his agents in case of narcotics and liquor, see subchapter D of chapter 23 and section 3170. 53 Stat. 395.

§ 3276. Application of state laws

The payment of any tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes. 53 Stat. 395.

§ 3277. Liability of partners

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax. 53 Stat. 395.

§ 3278. Liability in case of business in more than one location

The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this chapter for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business. 53 Stat. 395.

§ 3279. Liability in case of different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this chapter are carried on in the same place by the same person at the same time, except as otherwise provided in this chapter the tax shall be paid for each according to the rates severally prescribed. 53 Stat. 396.

§ 3280. Liability in case of death or change of location

(a) Requirements. When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the

same house and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner.

(b) Registration

For registration in case of narcotics, marihuana, and firearms, see sections 3221, 3231, and 3261, respectively.

(c) Transfer of duties

For transfer of powers and duties of Commissioner and his agents, in case of liquor, see section 3170.
53 Stat. 396.

§ 3281. Discretionary method allowed commissioner for collecting tax

Whether or not the method of collecting any tax imposed by section 3220 is specifically provided in this chapter, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. 53 Stat. 396.

§ 3282. Application of subchapter

The provisions of this subchapter, so far as applicable, shall extend to and include and apply to the special taxes imposed under subchapter A, and to the persons upon whom they are imposed. 53 Stat. 396.

§ 3283. Federal agencies or instrumentalities

Any tax imposed by this chapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax. Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 604, 64 Stat. 964.

Historical Note

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 8053.

CHAPTER 27A.—WAGERING TAXES

SUBCHAPTER A—TAX ON WAGERS

- Sec.
3285. Tax.
3286. Credits and refunds.
3287. Certain provisions made applicable.

SUBCHAPTER B—OCCUPATIONAL TAX

3290. Tax.
3291. Registration.
3292. Certain provisions made applicable.
3293. Posting.
3294. Penalties.

SUBCHAPTER C—MISCELLANEOUS PROVISIONS

3297. Applicability of federal and state laws.
3298. Inspection of books.

SUBCHAPTER A—TAX ON WAGERS

1951 Amendment. Chapter added by and made effective on Nov. 1, 1951 by section 471(a) of Act Oct. 20, 1951, 2:07 section 472 of Act Oct. 20, 1951. p. m., E.S.T., c. 521, Title IV, 65 Stat. 531,

§ 3285. Tax

(a) **Wagers.** There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) **Definitions.** For the purposes of this chapter—

(1) The term “wager” means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term “lottery” includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) **Amount of wager.** In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) **Persons liable for tax.** Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) **Exclusions from tax.** No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) **Territorial extent.** The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Section 472 of Act Oct. 20, 1951 provided that: "The tax imposed by subchapter A of chapter 27A [this subchapter], as added by section 471 [of such Act], shall apply only with respect to wagers placed on or after the first day of the first month which begins more than 10 days after the date of enactment of this Act [Oct. 20, 1951]. No tax shall be payable under subchapter B of chapter 27A, as added by section 471, with respect to any period prior to the first day of the first month which begins more than 10 days after the date of enactment of this Act. In the case of any person who is liable for tax under subchapter A of chapter 27A, as added by section 471, or who is engaged in receiving wagers for or on behalf of any person so liable, and who commenced the activity which makes him subject to such tax, or who was engaged in re-

ceiving such wagers, prior to the first day of the first month specified in the preceding sentence, the tax under subchapter B of chapter 27A, as added by section 471, shall be reckoned proportionately from the first day of such month to and including the thirtieth day of June following and shall be due on and payable on or before, the last day of the month specified in the preceding sentence."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

§ 3286. Credits and refunds

(a) No overpayment of tax under this subchapter shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax under this subchapter shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Where any taxpayer lays off part or all of a wager with another person who is liable for tax under this subchapter on the amount so laid off, a credit against the tax imposed by this subchapter shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid under this subchapter on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this sub-

section shall be allowed or made only in accordance with regulations prescribed by the Secretary; and no interest shall be allowed with respect to any amount so credited or refunded. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3287. Certain provisions made applicable

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax imposed by this subchapter. In addition to all other records required pursuant to section 2709, each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

SUBCHAPTER B—OCCUPATIONAL TAX

§ 3290. Tax

A special tax of \$50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3291. Registration

(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

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WAGERING TAXES

(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3292. Certain provisions made applicable

Sections 3271, 3273(a), 3275, 3276, 3277, 3279, and 3280 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation described in chapter 27. No other provision of subchapter B of chapter 27 shall so extend or apply. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3293. Posting

Every person liable for special tax under this subchapter shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Bureau of Internal Revenue. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

§ 3294. Penalties

(a) **Failure to pay tax.** Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000.

(b) **Failure to post or exhibit stamp.** Any person who, through negligence, fails to comply with section 3293, shall be liable to a pen-

alty of \$50, and the cost of prosecution. Any person who, through willful neglect or refusal, fails to comply with section 3293, shall be liable to a penalty of \$100, and the cost of prosecution.

(c) **Willful violations.** The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Effective Date. Effective date of taxes under this subchapter, see note under section 3235 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No

amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

SUBCHAPTER C.—MISCELLANEOUS PROVISIONS

§ 3297. Applicability of federal and state laws

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes. Added Oct. 20, 1951, 2:07 p. m. E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct.

20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3298. Inspection of books

Notwithstanding section 3631, the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(a), 65 Stat. 529.

Historical Note

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct.

20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

CHAPTER 28.—PROVISIONS COMMON TO MISCELLANEOUS TAXES

SUBCHAPTER A.—GENERAL PROVISIONS

PART I.—STAMPS, MARKS, AND BRANDS

Sec.

- 3300. Establishment and alteration.
- 3301. Attachment and cancellation.
- 3302. Repealed.
- 3303. Cancellation of stamps by perforation.
- 3304. Redemption of stamps.
- 3305. Transmission of stamps to internal revenue officers.

PART II.—ASSESSMENT, COLLECTION, AND REFUND

- 3310. Returns and payment of tax.
- 3311. Assessment of unpaid taxes payable by stamp.
- 3312. Period of limitation upon assessment and collection.
- 3313. Period of limitation upon refunds and credits.
- 3314. Cross reference.

PART III.—PENALTIES AND FORFEITURES

- 3320. Possession with intent to sell in fraud of law or to evade tax.
- 3321. Removal or concealment with intent to defraud the revenue.
- 3322. Forfeiture of packages containing forfeited goods.
- 3323. Provisions relating to emptied stamped packages.
- 3324. Penalty for sales to evade tax.
- 3325. Penalties for false statements to purchasers regarding tax.
- 3326. Penalty for fraudulently claiming drawback.

PART IV.—MISCELLANEOUS PROVISIONS

- 3330. Witnessing of returns in lieu of oath.
- 3331. Exemption from tax of domestic goods purchased for the United States.
- 3332. Exemption from tax of exports to foreign countries.
- 3333. Drawback in case of exports to foreign countries.
- 3334. Extension of time for filing returns.
- 3335. Cross reference.

SUBCHAPTER B.—PROVISIONS OF SPECIAL APPLICATION TO THE VIRGIN ISLANDS AND PUERTO RICO

- 3340—3343. Repealed.

PART I.—VIRGIN ISLANDS

- 3350. Shipments to the United States.
- 3351. Shipments from the United States.

PART II.—PUERTO RICO

- 3360. Shipments to the United States.
- 3361. Shipments from the United States.

SUBCHAPTER A.—GENERAL PROVISIONS

PART I.—STAMPS, MARKS, AND BRANDS

§ 3300. Establishment and alteration

(a) Authorization. The Commissioner, with the approval of the Secretary, may establish and, from time to time, alter or change the

form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue.

(b) **Application of penalty and forfeiture provisions.** All pains, penalties, fines, and forfeitures provided by law relating to internal revenue stamps shall apply to and have full force and effect in relation to any and all stamps so established by the Commissioner.

(c) **Cross references**

For other provisions giving the Commissioner general authority to establish, alter, and renew stamps, see section 3901(a) (2).

For special authority to provide suitable stamps in case of—

Tobacco, snuff, cigars, and cigarettes, see section 2002.

Documents, other instruments, and playing cards, see section 1809(b) (1).

Oleomargarine, see sections 2301(c) (1) and 2313.

Adulterated and process or renovated butter, see sections 2321(c) (1) and 2327(d).

Filled cheese, see sections 2351(c) and 2361.

Mixed flour, see sections 2381(c) and 2388.

Narcotics and marihuana, see sections 2550(c) (1), 2552, 2590(c), and 2592(b).

White phosphorus matches, see sections 2651(c), 2652, and 2659(a).

Cotton futures, see section 1920(c).

Distilled spirits, see sections 2802 and 2803.

Fermented liquors, see sections 3151 and 3152.

Occupational taxes, see section 3273.

Shotguns, rifles, and machine guns, see section 2720(c).

53 Stat. 398.

§ 3301. **Attachment and cancellation**

(a) **General authority to prescribe methods and instruments.** The stamps referred to in the preceding section shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Commissioner, with the approval of the Secretary, may prescribe; and he is authorized and empowered to make, with the approval of the Secretary, all needful regulations relating thereto.

(b) **Cross references**

For authority of the Commissioner to prescribe cancellation of stamps by perforation, see section 3303.

For special provisions relating to the attachment, protection, cancellation, and special issue of stamps in the case of—

Tobacco and snuff, see section 2103.

Cigars and cigarettes, see section 2112.

Documents, other instruments, and playing cards, see sections 1815 and 1816.

Oleomargarine, see section 2313.

Adulterated and process or renovated butter, see section 2327(d).

Filled cheese, see section 2361.

Mixed flour, see section 2388(a).

Narcotics and marihuana, see sections 2552, 2568, and 2592.

White phosphorus matches, see section 2659(a).

Distilled spirits, see sections 2802 and 2803.

Fermented liquors, see section 3152.

Shotguns, rifles, and machine guns, see section 2731.

53 Stat. 398.

§ 3302. **Repealed. Feb. 21, 1950, c. 36, § 7, 64 Stat. 8.**

Historical Note

Effective Date. Repeal of section as effective on the first day of the first month which begins six months or more after Feb. 21, 1950, see note set out under section 2800 of this title.

Repeals. Section 7 of Act Feb. 21, 1950, c. 36, 64 Stat. 8, provided in part that: "All other laws or parts of laws in conflict herewith are hereby repealed: *Provided, however,* That nothing contained herein shall be construed as repealing any law applying to the collection of taxes imposed on distilled spirits im-

ported into the United States, except alcohol that is imported and deposited in an alcohol bonded warehouse pursuant to section 3125, Internal Revenue Code."

Section Prior to Repeal:

§ 3302. **Expense**

"The stamps or device or instrument or means of removal or obliteration referred to in sections 3300 and 3301 shall entail no additional expense upon the persons required to affix or use the same. 53 Stat. 398."

§ 3303. Cancellation of stamps by perforation

In lieu of or in addition to other requirements of law in that respect, all stamps used for denoting internal revenue taxes may, in the discretion of the Commissioner, be canceled by perforations to be made in such manner and form as the Commissioner may, by regulation prescribe. 53 Stat. 399.

§ 3304. Redemption of stamps

(a) **Authorization.** The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

(b) **Method and conditions of allowance.** Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same can not be returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) **Time for filing claims.** No claim for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

(d) **Finality of Commissioner's decisions.** The finding of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

(e) Tobacco and cigars

For special provisions relating to redemption of spoiled stamps, in the case of tobacco, snuff, cigars, or cigarettes, see section 2198.
53 Stat. 399.

§ 3305. Transmission of stamps to internal revenue officers

The transmission of internal revenue stamps to the officers of the internal revenue service shall be made through the mails of the United States in registered packages. 53 Stat. 399.

PART II.—ASSESSMENT, COLLECTION, AND REFUND

§ 3310. Returns and payment of tax

(a) **Monthly returns.** All returns required to be made monthly by any person liable to tax shall be made on or before the 10th day of each month, and the tax assessed or due thereon shall be returned by the Commissioner to the collector on or before the last day of each month.

(b) **Other returns.** All returns for which no provision is otherwise made shall be made on or before the 10th day of the month succeeding the time when the tax is due and liable to be assessed, and the tax there-

on shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made.

(c) **Addition to tax in case of nonpayment.** When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of 5 per centum, together with interest at the rate of 6 per centum per annum, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided*, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner.

(d) **Demand for tax, penalty, and interest.** It shall then be the duty of the collector, in case of the nonpayment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with 5 per centum added thereto, and interest at the rate of 6 per centum per annum, as aforesaid, in the manner prescribed by law; and

(e) **Distrain.** If said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

(f) **Discretion allowed commissioner**

(1) **Returns and payment of tax.** Notwithstanding any other provision of law relating to the filing of returns or payment of any tax imposed by chapter 9, 9A, 10, 12, 19, 21, 30, 32, subchapter A of chapter 25, subchapter A of chapter 27A, or subchapter A of chapter 29, the Commissioner may by regulations approved by the Secretary prescribe the period for which the return for such tax shall be filed, the time for the filing of such return, the time for the payment of such tax, and the number of copies of the return required to be filed.

(2) **Use of Government depositaries.** The Secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this title, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the collector. 53 Stat. 399, amended Aug. 27, 1949, c. 517, § 7(a), 63 Stat. 668; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 471(b), 65 Stat. 531.

Historical Note

1951 Amendment. Subsec. (f) (1) amended by Act Oct. 20, 1951, which inserted "subchapter A of chapter 27A".

1949 Amendment. Subsec. (f) added by Act Aug. 27, 1949.

Effective Date of 1951 Amendment. Amendment of subsec. (f) (1) as effective Nov. 1, 1951, see note set out under section 3285 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20,

1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1930 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Act Aug. 27, 1949, 1949 U.S. Code Cong. Service, p. 1876.

§ 3311. **Assessment of unpaid taxes payable by stamp**

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner, within a period of not more than four years (except as

§ 3312

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provided in section 3312) after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes. 53 Stat. 400.

§ 3312. Period of limitation upon assessment and collection

Except in the case of income, war-profits, excess-profits, estate, and gift taxes, and except as otherwise provided in section 1635 with respect to employment taxes under subchapters A and D of chapter 9—

(a) **General rule.** All internal revenue taxes shall (except as provided in subsections (b), (c), and (d)) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(b) **False return or no return.** In case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) **Willful attempt to evade tax.** In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) **Collection after assessment.** Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun—

(1) Within six years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. 53 Stat. 400, amended Oct. 8, 1940, 11 p. m., El. S. T., c. 757, Title V, § 508(a), 54 Stat. 1008; Aug. 28, 1950, c. 809, Title II, § 207(b) (1), 64 Stat. 540.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by inserting after "gift taxes" a comma and the words "and except as * * * of chapter 9."

1940 Amendment. Opening phrase amended by Act Oct. 8, 1940, by inserting "war-profits, excess-profits," therein.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287.

§ 3313. Period of limitation upon refunds and credits

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, and except as otherwise provided by law in the case of employment taxes under subchapters A and D of chapter 9, and be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes, and other than such employment tax-

es) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund. 53 Stat. 400, amended Aug. 28, 1950, c. 809, Title II, § 207(b) (2), 64 Stat. 540.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by inserting after "and gift taxes" the words "and except * * of chapter 9," and by inserting after "and gift taxes" where it appears in the parenthetical phrase a comma and the

words "and other than such employment tax".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3314. Cross reference

For other provisions relating to assessment, collection, and refund, see subtitle D. 53 Stat. 401.

PART III.—PENALTIES AND FORFEITURES

§ 3320. Possession with intent to sell in fraud of law or to evade tax

(a) **Penalty.** Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of \$500 or not less than double the amount of taxes fraudulently attempted to be evaded.

(b) Forfeiture

For the forfeiture provision relating to such offenses, see section 3720(a). 53 Stat. 401.

§ 3321. Removal or concealment with intent to defraud the revenue

(a) **Penalty.** Every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine of not more than \$5,000 or be imprisoned for not more than 3 years, or both.

(b) Forfeiture

(1) **Goods.** Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited.

(2) **Packages.** In every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, shall be forfeited.

(3) **Conveyances.** Every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited.

(c) Cross reference

For provisions relating to distilled spirits and equipment subject to forfeiture, distraint, or judicial process, see sections 2805 and 2807. 53 Stat. 401.

§ 3322. Forfeiture of packages containing forfeited goods

In every case where any goods or commodities are forfeited under any internal revenue law, all casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained such goods or commodities, respectively, shall be forfeited. 53 Stat. 401.

§ 3323. Provisions relating to emptied stamped packages

(a) Penalties

(1) Disposal and receipt. Whenever any person sells, gives, purchases, or receives any box, barrel, bag, vessel, package, wrapper, cover, or envelope of any kind, stamped, branded, or marked in any way so as to show that the contents or intended contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the internal revenue laws has been complied with, whether such stamping, branding, or marking may have been a duly authorized act or may be false and counterfeit, or otherwise without authority of law, said box, barrel, bag, vessel, package, wrapper, cover, or envelope being empty, or containing anything else than the contents which were therein when said articles had been so lawfully stamped, branded, or marked by an officer of the revenue, he shall be liable to a penalty of not less than \$50 nor more than \$500.

(2) Manufacturing, stamping, or branding. Every person who makes, manufactures, or produces any box, barrel, bag, vessel, package, wrapper, cover, or envelope, stamped, branded, or marked, as above described, or stamps, brands, or marks the same, as hereinbefore recited, shall be liable to penalty as before provided in this section.

(3) Fraud. Every person who violates the foregoing provisions of this section, with intent to defraud the revenue, or to defraud any person, shall be liable to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for not less than six months nor more than five years, or to both, at the discretion of the court.

(b) Forfeiture. All articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents, shall be forfeited to the United States. 53 Stat. 401.

§ 3324. Penalty for sales to evade tax

(a) Nonenforceability of contract. Whenever any person who is liable to pay any tax upon any goods, wares, or merchandise, sells or causes or allows the same to be sold before the tax is paid to which said property is liable, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

(b) Forfeiture of sum paid on contract. If such goods, wares, or merchandise have been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

(c) Moiety. Any person who shall sue for the same in an action of debt shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States. 53 Stat. 402.

§ 3325. Penalties for false statements to purchasers regarding tax

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to

lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both. 53 Stat. 402.

§ 3326. Penalty for fraudulently claiming drawback

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the Secretary. 53 Stat. 402.

PART IV.—MISCELLANEOUS PROVISIONS

§ 3330. Witnessing of returns in lieu of oath

The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath. 53 Stat. 403.

§ 3331. Exemption from tax of domestic goods purchased for the United States

The privilege existing by provision of law on December 1, 1873 or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary may prescribe, to all articles of domestic production which are subject to tax by the provisions of this subtitle. 53 Stat. 403.

§ 3332. Exemption from tax of exports to foreign countries

For exemption from tax in case of—

Tobacco, snuff, cigars, and cigarettes, see section 2135.

Playing cards, see section 1830.

Oleomargarine, see section 2307.

Adulterated butter, see section 2327.

Mixed flour, see section 2385.

Firearms, see sections 2705 and 2727.

Distilled spirits, see sections 2885, 2905, and 3179.

Wines, see section 3037(a).

Fermented liquors, see section 3153(c).

53 Stat. 403.

§ 3333. Drawback in case of exports to foreign countries

For drawback on exports to foreign countries in case of—

Tobacco, snuff, cigars, and cigarettes, see section 2136.

Distilled spirits, see sections 2887 and 3179.

Stills, see section 3250(j) (3).

For allowance of drawbacks on shipments to Puerto Rico or the Philippine Islands, see sections 3361(c) and 3341(c).

53 Stat. 403.

§ 3334. Extension of time for filing returns

For authority of collectors to grant extensions of time for the filing of returns (except in the case of income tax), see section 3634.

53 Stat. 403.

§ 3335

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§ 3335. Cross reference

For other administrative provisions, see subtitle D.

53 Stat. 403.

SUBCHAPTER B.—PROVISIONS OF SPECIAL APPLICATION TO THE VIRGIN ISLANDS AND PUERTO RICO

Act Apr. 30, 1946, c. 244, Tit. V, § 507 (c) (1), 60 Stat. 158, eff. May 1, 1946, amended heading by striking out "Philippines", and subsec. (c) (2) of said sec-

tion, struck out "Part I—Philippines" and renumbered "Parts II and III" to be "Parts I and II".

§§ 3340–3343. Repealed. Apr. 30, 1946, c. 244, Title V, §§ 506(b), 507(b), 60 Stat. 157, eff. July 4, 1946.

Historical Note

Sections Prior To Repeal:

"§ 3340. Shipments to the United States

"(a) Tax imposed in United States

"(1) Amount. There shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture.

"(2) Payment. Such tax shall be paid by internal revenue stamp or stamps, to be provided by the Commissioner, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary, shall prescribe.

"(b) Exemption from tax imposed in the Philippine Islands. Such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands. 53 Stat. 403.

"§ 3341. Shipments from the United States

"(a) Tax imposed in Philippine Islands

"(1) Amount. There shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture.

"(2) Payment. Such tax shall be paid by internal revenue stamps or otherwise, as provided by the laws of the Philippine Islands.

"(b) Exemption from tax imposed in United States. Such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the United States.

"(c) Drawback of tax paid in the United States. All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the Philippine Islands. 53 Stat. 404, amended July 22, 1941, c. 314, § 1, 55 Stat. 602.

"§ 3342. Imports from countries other than the United States

"In addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States. 53 Stat. 404.

"§ 3343. Deposit of internal revenue collections

"(a) Payment into the Philippine treasury. All internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury.

"(b) Philippine trust fund. The duties and taxes collected in the Philippine Archipelago in pursuance of the act of March 8, 1902, c. 140, 32 Stat. 54, and all duties and taxes collected in the United States upon articles coming from the Philippine Archipelago and upon foreign vessels coming therefrom, shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the treasury of the Philippine Islands, to be used and expended for the government and benefit of said islands.

"(c) Cross reference

"For special provisions relating to taxes collected in the case of coconut oil, see section 2476.

"53 Stat. 404."

PART I.—VIRGIN ISLANDS

Act Apr. 30, 1946, c. 244, Title V, § 507(c) (3), 60 Stat 158, eff. May 1, 1946, renumbered former "Part II" to be "Part I".

§ 3350. Shipments to the United States

(a) **Taxes imposed in the United States.** Except as provided in section 3123, there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

(b) **Exemption from tax imposed in the Virgin Islands.** Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands.

(c) **Disposition of internal revenue collections.** Beginning with the fiscal year ending June 30, 1954, and annually thereafter, the Secretary of the Treasury shall determine the amount of all taxes imposed by, and collected during the fiscal year under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 per centum and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(i) There shall be transferred and paid over to the government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the government of the Virgin Islands during the fiscal year, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine: *Provided*, That the approval of the President or his designated representative shall be obtained before such moneys may be obligated or expended.

(ii) There shall also be transferred and paid over to the government of the Virgin Islands during each of the fiscal years ending June 30, 1955, and June 30, 1956, the sum of \$1,000,000, or the balance of the internal revenue collections available under this subsection (c) after payments are made under the preceding paragraph (i), whichever amount is greater. The moneys so transferred and paid over shall be deposited in the separate fund established by the preceding paragraph (i), but shall be obligated or expended for emergency purposes and essential public projects only, with the prior approval of the President or his designated representative.

(iii) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under (i) above at the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for approved emergency relief purposes and essential public projects as provided in (ii) above. The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only, including payments under (ii) above, shall not exceed the sum of \$5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of \$5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts. 53 Stat. 404, amended July 22, 1954, c. 558, § 28(b), 68 Stat. 508.

Historical Note

1954 Amendment. Subsec. (c) added by Act July 22, 1954.

Effective Date of 1954 Amendment. Effective date of Act July 22, 1954, amending this section, see note under section 1541 of Title 48, Territories and Insular Possessions.

Virgin Islands; Power of Legislature to Enact Laws. Nothing contained in subsec. (c) of this section to be construed as limiting power of Virgin Islands legislature to enact laws for the

protection of life, public health or public safety, see section 1561 of Title 48, Territories and Insular Possessions.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act July 22, 1954, see 1954 U.S.Code Cong. and Adm. News, p. 2585.

§ 3351. Shipments from the United States

(a) **Tax imposed in Virgin Islands.** There shall be levied, collected, and paid in the Virgin Islands upon articles imported from the United States, a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

(b) **Exemption from tax imposed in the United States.** Such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal revenue laws of the United States.

(c) **Draw-back of tax paid in the United States.** All provisions of law for the allowance of draw-back of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the Virgin Islands. 53 Stat. 405, amended July 22, 1941, c. 314, § 2, 55 Stat. 602.

Historical Note

1941 Amendment. Subsec. (c) added by Act July 22, 1941.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

PART II.—PUERTO RICO

Act Apr. 30, 1946, c. 244, Title V, § 507
(c) (3), 60 Stat. 158, eff. May 1, 1946,
renumbered "Part III" to be "Part II".

§ 3360. Shipments to the United States

(a) **Rate of tax.** Except as provided in section 3123, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

(b) Payment of tax

(1) **Upon entry into United States.** Such tax shall be paid by internal revenue stamp or stamps to be purchased and provided by the Commissioner and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) **Before shipment from Puerto Rico.** All United States internal revenue taxes imposed by law on articles of Puerto Rican manufacture coming into the United States for consumption or sale may be paid by affixing to such articles before shipment thereof a proper United States internal revenue stamp denoting such payment.

(A) **Appointment of deputy collector at San Juan.** For the purpose of carrying into effect the provisions of paragraph (2) of this subsection, the Secretary is authorized to grant to such collector of internal revenue as may be recommended by the Commissioner, and approved by the Secretary, an allowance for the salary and expenses of a deputy collector to be stationed at San Juan, Puerto Rico, the appointment of this deputy to be approved by the Secretary.

(B) **Bond of deputy collector at San Juan.** Before entering upon the duties of his office such deputy collector shall execute a bond, payable to the collector appointing him, in such amount and with such sureties as he may determine.

(C) **Duties of deputy collector at San Juan.** The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Puerto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Puerto Rico. All such stamps so issued or transferred to said deputy shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps. The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns as the Commissioner may, by regulations approved by the Secretary, direct.

(D) **General laws applicable.** All provisions of law relative to the appointment, duties, and compensation of deputy collectors, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy assigned to duty under the provisions of paragraph (2) of this subsection.

(c) **Deposit of internal revenue collections.** All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island, shall be covered into the treasury of Puerto Rico. 53 Stat. 405.

§ 3361. Shipments from the United States

(a) **Tax imposed in Puerto Rico.** All articles of merchandise of United States manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

(b) **Exemption from tax imposed in the United States.** Articles, goods, wares, or merchandise going into Puerto Rico, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

(c) **Draw-back of tax paid in the United States.** All provisions of law for the allowance of draw-back of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, Guam, or American Samoa. 53 Stat. 406, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 408, 53 Stat. 885; July 22, 1941, c. 314, § 3, 55 Stat. 602.

Historical Note

1941 Amendment. Subsec. (c) amended by Act July 22, 1941, which omitted words "in effect March 4, 1915," following words "All provisions of law" and added at end words "Guam, or American Samoa."

1939 Amendment. Subsec. (b) amended by Act June 29, 1939, which inserted words "Guam, and American Samoa".

Text of Amending Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBTITLE C.—MANUFACTURERS' EXCISE AND IMPORT TAXES AND TEMPORARY TAXES

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29. Manufacturers' Excise and Import Taxes	3400
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1941 Amendment. Subtitle heading
amended by Act Sept. 20, 1941, 12:15 p.
m., E. S. T., c. 412, Title V, § 503, 55
Stat. 706.

CHAPTER 29.—MANUFACTURERS' EXCISE AND IMPORT TAXES

SUBCHAPTER A.—MANUFACTURERS' EXCISE TAXES

Sec.
3400. Tax on tires and inner tubes.
3401. Tax on toilet preparations, etc.
3403.1 Tax on automobiles, etc.
3404. Tax on radio receiving sets, television receiving sets, phonographs, phonograph records, and musical instruments.
3405. Tax on mechanical refrigerators, quick-freeze units, and self-con- tained air-conditioning units.
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3407. Tax on firearms, shells, and cartridges.
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- 3443. Credits and refunds.
- 3444. Use by manufacturer, producer, or importer.
- 3445. Sales by others than manufacturer, producer, or importer.
- 3446. Exemption of articles manufactured or produced by Indians.
- 3447. Contracts prior to May 1, 1932.
- 3448. Return and payment of manufacturers' taxes.
- 3449. Applicability of administrative provisions.
- 3450. Rules and regulations.
- 3451. Exemption from tax of certain supplies for vessels.
- 3452. Repealed.
- 3453. Existing contracts.

¹ There is no section 3402.² There is no section 3410.³ There is no section 3421.

SUBCHAPTER A.—MANUFACTURERS' EXCISE TAXES

§ 3400. Tax on tires and inner tubes

(a) **Tax.** There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires wholly or in part of rubber, 5 cents a pound on total weight (exclusive of metal rims or rim bases), to be determined under regulations prescribed by the Commissioner with the approval of the Secretary. The tax imposed by this paragraph shall not apply to (A) tires which are not more than 20 inches in diameter and not more than one and three-fourths inches in cross-section, if such tires are of all-rubber construction (whether hollow center or solid) without fabric or metal reinforcement, or (B) tires of extruded tiring with internal wire fastening agent.

(2) Inner tubes (for tires) wholly or in part of rubber, 9 cents a pound on total weight, to be determined under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Floor stocks tax.** Upon tires and inner tubes subject to tax under subsection (a) of the type used on vehicles subject to tax under section 3403(a) or (b) which on October 1, 1941, are held for sale by any person there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2½ cents per pound in the case of tires and 4½ cents per pound in the case of inner tubes. The tax shall apply to tires and inner tubes held for sale on, or in connection with, or held for use in the manufacture or production of, articles the sale of which will be subject to tax under section 3403(a) or (b). The tax shall not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof, and to tires and inner tubes the sale of which will be subject under the provisions of sections 3444(a) (2) and 3445 to the manufacturers' tax on tires and inner tubes.

(c) **Definition.** For the purposes of this chapter, the term "rubber" includes synthetic and substitute rubber. 53 Stat. 409, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 535, 55 Stat. 709; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 306, 58 Stat. 64; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 481(h), 65 Stat. 533.

Historical Note

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, which added second sentence.

1944 Amendment. Subsec. (c) added by Act Feb. 25, 1944

1941 Amendment. Subsec. (a), formerly entire section, was designated "(a) Tax" and pars. (1) and (2) thereof were amended by Act Sept. 20, 1941, § 535(c), (a), (b), respectively. Amendments to pars. (1) and (2) substituted "5 cents" for "2¼ cents" and "9 cents" for "4 cents", respectively.

Subsec. (b) added by Act Sept. 20, 1941, § 535(c).

Effective Date of 1951 Amendment. Section 490 of Act Oct. 20, 1951 provided that the amendments made by that Act to this section and sections 3403, 3405, 3406 and 3412 of this title, and the amendment of chapter 29 of this title by such Act, which added section 3408 to such chapter, should take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this Act (Oct. 20, 1951).

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on the first day of the first month which begins more than 10 days after the date of the enactment of this Act by section 301 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with Oct. 1, 1941, by section 536 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781.

§ 3401. Tax on toilet preparations, etc.

Historical Note

Termination of Tax. This section has been omitted from the Code. Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 552(b), 55 Stat. 720, which was made effective on Oct. 1, 1941, by section 558 thereof, provided as follows: "The tax imposed by section 3401 of the Internal Revenue Code shall not apply to articles sold on or after October 1, 1941."

Section Prior To Termination:

"§ 3401. Tax on toilet preparations, etc.

"There shall be imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 10 per centum of the price for which so sold: Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes

"In the case of a sale by a manufacturer to a selling corporation of an article to which the tax under this section applies, the transaction shall be prima facie presumed to be otherwise than at arm's length if either the manufacturer or the selling corporation owns more than 75 per centum of the outstanding stock of the other, or if more than 75 per centum of the outstanding stock of both corporations is owned by the same persons in

substantially the same proportions. Sales by a manufacturer to a selling corporation shall in all other cases be prima facie presumed to be at arm's length.

"Notwithstanding section 3441(a), in determining, for the purpose of this section, the price for which an article is sold, whether at arm's length or not, there shall be included any charge for coverings and containers of whatever nature, only if furnished by the actual manufacturer of the article, and any charge incident to placing the article in condition packed ready for shipment, only if performed by the actual manufacturer of the article, but there shall be excluded the amount of the tax imposed by this section, whether or not stated as a separate charge. Whether sold at arm's length or not, a transportation, delivery, insurance, or other charge, and the wholesaler's salesman's commissions and costs and expenses of advertising and selling (not required by the foregoing sentence to be included), shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations. 53 Stat. 410, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 3, 53 Stat. 863."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3403.1 Tax on automobiles, etc.

There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold:

(a) [Automobile and truck chassis, etc.] ² Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 8 per centum, except that on and after April 1, 1955, the rate shall be 5 per centum. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(b) Other chassis and bodies, etc. Other automobile chassis and bodies, chassis and bodies for trailers and semitrailers (other than house trailers) suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 10 per centum, except that on and after April 1, 1955, the rate shall be 7 per centum. A sale of an automobile, trailer, or semitrailer shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(c) [Parts and accessories] ² Parts or accessories (other than tires and inner tubes and other than radio or television receiving sets) for any of the articles enumerated in subsection (a) or (b), 8 per centum, except that on and after April 1, 1955, the rate shall be 5 per centum. For the purposes of this subsection and subsections (a) and (b), spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a) or (b), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use. This subsection shall not apply to chassis or bodies for automobile trucks or other automobiles. Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under this subsection shall not apply in the case of sales of parts or accessories by the manufacturer, producer, or importer to a manufacturer or producer of any of the articles enumerated in subsection (a) or (b). If any such parts or accessories are resold by such vendee otherwise than on or in connection with, or with the sale of, an article enumerated in subsection (a) or (b) and manufactured or produced by such vendee, then for the purposes of this section the vendee shall be considered the manufacturer or producer of the parts or accessories so resold. In determining the sale price of a rebuilt automobile part or accessory there shall be excluded from the price, in accordance with regulations prescribed by the Secretary, the value of a like part or accessory accepted in exchange.

(d) Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under subsection (a) or (b) shall not apply in the case of sales of bodies by the manufacturer, producer, or importer to a manufacturer or producer of automobile trucks or other automobiles to be sold by such vendee. For the purposes of subsection (a) or (b) such vendee shall be considered the manufacturer or producer of such bodies.

(e) [Tires, radios, and television sets.] ² If tires, inner tubes, or automobile radio or television receiving sets on which tax has been imposed under this chapter are sold on or in connection with, or with the sale of, a chassis, body, or motorcycle, there shall (under regulations prescribed by the Secretary) be credited against the tax under this section

an amount equal to, in the case of an article taxable under subsection (a) or subsection (b), the applicable percentage rate of tax provided in such subsections—

(1) of the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 3400 (relating to tax on tires and inner tubes) or, in the case of automobile radio or television receiving sets, if such sets were taxable under section 3404; or

(2) if such tires, inner tubes, or automobile radio or television receiving sets were taxable under section 3444 (relating to use by manufacturer, producer, or importer), then of the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires, inner tubes, or sets are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary.

(f) Floor stocks refunds.

(1) Where before April 1, 1955, any article subject to the tax imposed by subsection (a) or (b) has been sold by the manufacturer, producer, or importer, and is on such date held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after April 1, 1955.

(2) As used in this subsection, the term "dealer" includes a wholesaler, jobber, distributor, or retailer. For the purposes of this subsection, an article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) Under regulations prescribed by the Secretary, the refund provided by this subsection may be made to the dealer instead of the manufacturer, producer, or importer, if the manufacturer, producer, or importer waives any claim for the amount so to be refunded.

(4) When the credit or refund provided for in this subsection has been allowed to the manufacturer, producer, or importer, he shall remit to the dealer to whom was sold the article in respect of which the credit or refund was allowed so much of that amount of the tax corresponding to the credit or refund as was included in or added to the price paid or agreed to be paid by the dealer.

(5) No person shall be entitled to credit or refund under this subsection unless (A) he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this subsection, and (B) claim for such credit or refund is filed with the Secretary before July 1, 1955.

(6) All provisions of law, including penalties, applicable in respect of the tax imposed under subsections (a) and (b) shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the credits and refunds provided for in this subsection. 53 Stat. 410, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, §§ 209, 216, 54 Stat. 522, 526; Sept. 20, 1941, 12:15, p. m., E. S. T., c. 412, Title V, §§ 544, 553(d), 55 Stat. 711, 721; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 605(b), (c) (1), 64 Stat. 964, 965; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 481(a-e), 65 Stat. 532; Mar. 31, 1954, c. 126, Title VI, § 601(a) (8), (c), 68 Stat. 45, 46.

¹ So in original. There is no section 3402.

² Catchline supplied by Editor.

Historical Note

1954 Amendment. Subsecs. (a), (b), and (c) amended by Act Mar. 31, 1954, § 601(a) (8), which in each such subsec. substituted "April 1, 1955" for "April 1, 1954".

Subsec. (f) added by Act Mar. 31, 1954, § 601(c).

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 481(a), which substituted "8 per centum, except that on and after April 1, 1954, the rate shall be 5 per centum" in lieu of "5 per centum".

Subsec. (b) amended by Act Oct. 20, 1951, § 481(b), which increased the rate of tax on other chassis, bodies, etc. (except on house trailers), from 7 per centum to 10 per centum, until April 1, 1954.

Subsec. (c) amended by Act Oct. 20, 1951, § 481(c) (d), which increased the rate of tax on parts and accessories from 5 per centum to 8 per centum, until April 1, 1954, and added last sentence.

Subsec. (e) amended by Act Oct. 20, 1951, § 481(e), to equalize the rates of credit allowable to manufacturers for tax-paid tires, inner tubes, and automobile radio or television receiving sets used in the manufacture of automobiles, etc., with the rates of tax imposed on automobiles, etc., by this section as amended by such Act.

1950 Amendment. Subsec. (c) amended by Act Sept. 23, 1950, § 605(c) (1), to substitute "radio and television receiving sets" in lieu of "radios".

Subsec. (e) amended by Act Sept. 23, 1950, § 605(h), to impose a tax on automobile television sets.

1941 Amendment. Subsecs. (a), (b), and first sentence of (c) amended by Act Sept. 20, 1941, § 544(a) and (b).

Subsec. (e) amended by Act Sept. 20, 1941, §§ 541(c), 553(d). The former amended the subsec. generally and the latter inserted matter relating to automobile radios.

Subsec. (f) repealed by Act Sept. 20, 1941, § 544(d). Prior to such repeal, said subsec. provided:

"(f) (1) Where prior to August 1, 1941, any article subject to the tax imposed by this section or section 3400, relating to tax on tires and inner tubes, has been sold by the manufacturer, producer, or importer, and is on such date held by a dealer and intended for sale, there shall be refunded to the manufacturer, producer, or importer the amount of the tax, or if the tax has not been paid, the tax shall be abated.

"(2) As used in this subsection the term 'dealer' includes a wholesaler, jobber, or distributor. For the purposes of this subsection, an article shall be considered as 'held by a dealer' if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title

to such article or possession thereof has not at any time been transferred to any person other than a dealer.

"(3) Under regulations prescribed by the Commissioner, with the approval of the Secretary, the refund provided by this subsection—(A) may be applied as a credit against the tax shown by subsequent returns of the manufacturer, producer, or importer, and (B) may be made to the dealer instead of to the manufacturer, producer, or importer, if the manufacturer, producer, or importer waives any claim for the amount so to be refunded.

"(4) When the refund, credit, or abatement provided for in this subsection has been allowed to the manufacturer, producer, or importer, he shall remit to the dealer to whom was sold the article in respect of which the refund, credit, or abatement was allowed, so much of that amount of the tax corresponding to the refund, credit, or abatement, as was included in or added to the price paid or agreed to be paid by the dealer. Upon the failure of the manufacturer, producer, or importer to make such remission he shall be liable to the dealer for damages in the amount of three times the amount thereof, and the court shall include in any judgment in favor of the dealer in any suit for the recovery of such damages, costs of the suit and a reasonable attorney's fee to be fixed by the court. 53 Stat. 410, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522."

1940 Amendment. Subsec. (c) amended by Act June 25, 1940, § 216, which added last par.

Subsec. (f) (1) amended by Act June 25, 1940, § 209, which struck out "1941" and inserted in lieu thereof "1945".

1939 Amendment. Subsec. (f), par. (1) amended by Act June 29, 1939. Prior to amendment subsec. (f) (1) read as follows:

"(f) (1) Where prior to August 1, 1939, any article subject to the tax imposed by this section or section 3400, relating to tax on tires and inner tubes, has been sold by the manufacturer, producer, or importer, and is on such date held by a dealer and intended for sale, there shall be refunded to the manufacturer, producer, or importer the amount of the tax, or if the tax has not been paid, the tax shall be abated."

Effective Date of 1951 Amendment. Amendment of this section by Act Oct. 20, 1951 to take effect on first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 3400 of this title.

Effective Date of 1950 Amendments. Amendments of subsecs. (c) and (e) by Act Sept. 23, 1950, as effective only with respect to articles sold on or after the first day of the first month which be-

gins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, § 544, affecting subsecs. (a), (b), (c), (e), and (f) of this section was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof. Section 553(d) of that Act, also cited, and which affected subsec. (e) of this section, was made effective on Oct. 1, 1941, by section 558 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055. See, also, Acts Oct. 20, 1951, 1951 U.S. Code Cong. Service, p. 1781; Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053.

§ 3404. Tax on radio receiving sets, television receiving sets, phonographs, phonograph records, and musical instruments

There shall be imposed upon the following articles (including in each case, except in the case of musical instruments, parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which sold:

(a) Radio receiving sets, automobile radio receiving sets, television receiving sets, automobile television receiving sets, phonographs, and combinations of any of the foregoing. No tax shall be imposed under this subsection with respect to the sale to the United States for its exclusive use of a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations.

(b) Chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use. Under regulations prescribed by the Secretary, no tax shall be imposed under this subsection with respect to the sale of any article for use by the vendee as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers are to be sold by the vendee to the United States for its exclusive use. If any article sold tax-free to such vendee is not so used by him, or being so used the receiver is not so sold, the vendee shall be considered as the manufacturer or producer of such article.

(c) Phonograph records.

(d) Musical instruments, but the tax imposed by this section shall not apply to musical instruments sold for the use of any religious or nonprofit educational institution for exclusively religious or educational purposes. The right to exemption under this subsection shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may prescribe by regulations. 53 Stat. 411, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 545, 55 Stat. 712; July 3, 1948, c. 829, § 5, 62 Stat. 1260; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 605(a), 64 Stat. 964; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 482(a, b), 65 Stat. 533.

¹ So in original. Probably should read "United".

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 482(a), which added second sentence.

Subsec. (b) amended by Act Oct. 20, 1951, § 482(b), which added second and third sentences.

1950 Amendment. Subsec. (a) and (b) amended by Act Sept. 23, 1950, to impose a tax on television sets.

1948 Amendment. Subsec. (d) amended July 3, 1948, which added all text after "Musical instruments".

1941 Amendment. Act Sept. 20, 1941, amended section in its entirety.

Effective Date of 1951 Amendment. Section 482(f) of Act Oct. 20, 1951 provided that the amendments to subsecs. (a) and (b) of this section by section 482(a) (b) of such Act should take effect as provided in section 490 of such Act. That section of such Act provided for an effective date of "the first day of the first month which begins more than 10 days after the date of enactment" of such Act (Oct. 20, 1951).

Effective Date of 1950 Amendments. Amendment of subsecs. (a) and (b) by Act Sept. 23, 1950, as effective only with respect to articles sold on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Organs Under Contract Before Oct. 1, 1941. Act Oct. 21, 1942, 4:30 p. m., E.W. T., c. 619, Title VI, § 610, 56 Stat. 977, provided as follows:

"The tax under section 3404(d) of the Internal Revenue Code shall not apply to the sale of an organ sold under a bona fide written contract entered into before October 1, 1941, and tax paid with respect to the sale of an organ under such a contract may be refunded, subject to the provisions of section 3443(d) of the Internal Revenue Code."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3.15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1930 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3053. See, also, Act July 3, 1948, 1948 U.S. Code Cong. Service, p. 2337.

§ 3405. Tax on mechanical refrigerators, quick-freeze units, and self-contained air-conditioning units

There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 5 per centum (10 per centum in the case of articles subject to tax under subsection (c)) of the price for which so sold:

(a) **Refrigerators and quick-freeze units.** Household type refrigerators (for single or multiple cabinet installations) having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; household type units for the quick freezing or frozen storage of foods operated by electricity, gas, kerosene, or gasoline; combinations of such household type refrigerators and units.

(b) **Refrigerating and freezing apparatus.** Cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls (hereinafter referred to as "refrigerator components") for, or suitable for use as parts of or with, household type refrigerators or quick-freeze units of the kind described in subsection (a), except when sold as component parts of complete refrigerators, refrigerating or cooling apparatus, or quick-freeze units (hereafter referred to as "refrigerating equipment"). Under regulations prescribed by the Secretary, the tax under this subsection shall not apply in the case of sales of any such refrigerator components by the manufacturer, producer, or importer to (1) a manufacturer or producer of refrigerating equipment, or (2) a vendee for resale to a manufacturer or producer of refrigerating equipment if such components are in due course so resold. If any such refrigerator components are resold by the manufacturer or producer to whom sold or resold otherwise than on or in connection with, or with the sale of, complete refrigerating equipment manufactured or produced by him, then for the purposes of this section such manufacturer or producer shall be

considered the manufacturer or producer of the refrigerator components so resold by him.

(c) **Air-conditioners.** Self-contained air-conditioning units. 53 Stat. 412, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 546, 55 Stat. 713; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 614, 56 Stat. 978; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 606, 64 Stat. 965; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 483, 65 Stat. 534; Mar. 31, 1954, c. 126, Title III, § 305(a), 68 Stat. 40.

Historical Note

1954 Amendment. Opening par. amended by Act Mar. 31, 1954, which substituted "5 per centum (10 per centum in the case of articles subject to tax under subsection (c))" for "10 per centum".

1951 Amendment. Subsec. (b) amended by Act Oct. 20, 1951, to provide that a manufacturer of refrigerator components may sell such components tax free to a wholesaler or dealer if such components are purchased for resale to a manufacturer of refrigerator equipment and provided the regulations prescribed by the Secretary of the Treasury relating to such sales are complied with.

1950 Amendment. Subsecs. (a) and (b) amended by Act Sept. 23, 1950, to impose a tax on quick-freeze units.

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1941 Amendment. Act Sept. 20, 1941, amended section in its entirety.

Effective Date of 1954 Amendment. Effective date of amendment of opening par. of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of this title.

Effective Date of 1951 Amendment. Amendment of this section by Act Oct. 20, 1951 to take effect on first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 3400 of this title.

Effective Date of 1950 Amendments. Amendment of subsecs. (a) and (b) by Act Sept. 23, 1950, as effective only with respect to articles sold on or after the

first day of the first month which begins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Acts Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781; Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053.

§ 3406. Excise taxes imposed by the Revenue Act of 1941

(a) **Imposition.** There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

(1) **Sporting goods.** Badminton nets; badminton rackets (measuring 22 inches over all or more in length); badminton racket frames (measuring 22 inches over all or more in length); badminton racket string; badminton shuttlecocks; badminton standards; billiard and pool tables (measuring 45 inches over all or more in length); billiard and pool balls and cues for such tables; bowling balls and pins; clay pigeons and traps for throwing clay pigeons; cricket balls; cricket bats; croquet balls and mallets; curling stones; deck tennis rings, nets, and posts; golf bags (measuring 26 inches or more in length); golf balls; gold clubs (measur-

ing 30 inches or more in length); lacrosse balls; lacrosse sticks; polo balls; polo mallets; skis; ski poles; snowshoes; snow toboggans and sleds (measuring more than 60 inches over all in length); squash balls; squash rackets (measuring 22 inches over all or more in length); squash racket frames (measuring 22 inches over all or more in length); squash racket string; table tennis tables, balls, nets, and paddles; tennis balls; tennis nets; tennis rackets (measuring 22 inches over all or more in length); tennis racket frames (measuring 22 inches over all or more in length); tennis racket string; fishing rods, creels, reels, and artificial lures, baits, and flies; 10 per centum.

(2) **Luggage.** Trunks, valises, traveling bags, suitcases, hat boxes for use by travelers, fitted toilet cases (not including contents), and other traveler's luggage, and leather and imitation leather brief cases, 10 per centum. The tax imposed by this paragraph shall not be applicable with respect to any period for which a tax is imposed under section 1651.

(3) **Electric, gas, and oil appliances.** Electric direct motor-driven fans and air circulators (not of the industrial type): and the following appliances of the household type; electric, gas, or oil water heaters; electric flat irons; electric air heaters (not including furnaces); electric immersion heaters; electric blankets, sheets, and spreads; electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; and electric mixers, whippers, and juicers; electric belt-driven fans; electric exhaust blowers; electric or gas clothes driers; electric door chimes; electric dehumidifiers; electric dishwashers; electric floor polishers and waxers; electric food choppers and grinders; electric hedge trimmers; electric ice cream freezers; electric mangles; electric motion or still picture projectors; electric pants pressers; electric garbage disposal units; and power lawn mowers; 5 per centum.

(4) **Photographic apparatus.** Cameras and camera lenses, and unexposed photographic film in rolls (including motion picture film), 10 per centum. The tax imposed under this paragraph shall not apply to X-ray cameras, to cameras weighing more than four pounds exclusive of lens and accessories, to still camera lenses having a focal length of more than one hundred and twenty millimeters, to motion picture camera lenses having a focal length of more than thirty millimeters, to X-ray film, to unperforated microfilm, to film more than one hundred and fifty feet in length, or to film more than twenty-five feet in length and more than thirty millimeters in width. Any person who acquires unexposed photographic film not subject to tax under this paragraph and sells such unexposed film in form and dimensions subject to tax hereunder (or in connection) shall for the purposes of this subsection be considered the manufacturer of the film so sold by him.

(5) **Electric signs.** Neon-tube signs, electric signs, and electric advertising devices, 10 per centum.

(6) **Business and store machines.** Adding machines, addressing machines, autographic registers, bank proof machines, billing machines, book-keeping machines, calculating machines, card punching machines, cash registers, except cash registers of the type used in registering over-the-counter retail sales, change making machines, check writing machines, check signing machines, check canceling machines, check perforating machines, check cutting machines, check dating machines, other check protector machine devices, computing machines, coin counters, dictographs, dictating machine record shaving machines, dictating machines, duplicating machines, embossing machines, envelope opening machines, erasing machines, folding machines, fan-fold machines, fare registers, fare boxes, listing machines, line-a-time and similar machines, mailing machines, multigraph machines, multigraph typesetting machines, multigraph type

justifying machines, numbering machines, portable paper fastening machines, pay roll machines, pencil sharpeners, postal permit mailing machines, punch card machines, sorting machines, stencil cutting machines, shorthand writing machines, sealing machines, tabulating machines, ticket counting machines, ticket issuing machines, typewriters, transcribing machines, time recording devices, and combinations of any of the foregoing, 10 per centum.

(7) **Rubber articles.** Articles of which rubber is the component material of chief weight, 10 per centum. The tax imposed under this paragraph shall not be applicable to footwear, articles designed especially for hospital or surgical use, or articles taxable under any other provision of this chapter.

(8) **Washing machines.** Washing machines of the kind used in commercial laundries, 10 per centum. No tax shall be imposed under this paragraph on washing machines of the household type.

(9) **Optical equipment.** Refractometers; spectrometers; spectroscopes; colorimeters; polariscopes; optical measuring instruments; telescopic sights; projection lenses and prisms; optical machinery; microscopes; telescopes; photo-micro and micro-projection apparatus; fire control optical instruments; and searchlight mirrors and reflectors; 10 per centum.

(10) **Electric light bulbs and tubes.** Electric light bulbs and tubes, not including articles taxable under any other provision of this subchapter, 10 per centum.

(b) **Exemption if Article Taxable as Jewelry.** No tax shall be imposed under this section on any article taxable under section 2400 (relating to jewelry tax).

(c) **Effective Date.** This section shall take effect on October 1, 1941. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 551, 55 Stat. 716, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, §§ 607, 615, 56 Stat. 978; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, §§ 304, 311, 58 Stat. 64, 69; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 484, 485, 486(a), 65 Stat. 534; May 21, 1952, c. 319, § 1(a), 66 Stat. 86; Mar. 31, 1954, c. 126, Title III, §§ 301, 305(a), 68 Stat. 39, 40.

Historical Note

1954 Amendments. Subsec. (a) (1) amended by Act Mar. 31, 1954, § 301(a), which struck out "15 per centum, except that on and after April 1, 1954, the rate shall be 10 per centum;" preceding "fishing rods", thus reducing the tax rate on all sporting goods items enumerated therein to 10 per centum.

Subsec. (a) (3) amended by Act Mar. 31, 1954, which substituted "5 per centum" for "10 per centum" at the end thereof.

Subsec. (a) (4) amended by Act Mar. 31, 1954, § 301(b), which, in first sentence, substituted "10 per centum" for "20 per centum".

Subsec. (a) (10) amended by Act Mar. 31, 1954, § 301(c), which substituted "10 per centum" for "5 per centum".

1952 Amendment. Subsec. (a) (4) amended by Act May 21, 1952, to include within its provisions "unperforated microfilm".

1951 Amendment. Subsec. (a) (1) amended generally by Act Oct. 20, 1951, § 484, to increase the tax rate from 10 per

centum to 15 per centum on various sporting goods items until April 1, 1954.

Subsec. (a) (3) amended by Act Oct. 20, 1951, § 485, which (1) substituted "Electric direct motor-driven fans and air circulators (not of the industrial type); and the following appliances of the household type:" in lieu of "Electric direct motor-driven fans and air circulators:"; (2) struck out "electric heating pads and blankets" and in lieu thereof inserted "electric blankets, sheets, and spreads"; and (3) inserted all electric appliance items after "juicers".

Subsec. (a) (4) amended by Act Oct. 20, 1951, § 486(a), to exclude certain items of photographic apparatus and film, and to establish a uniform tax rate of 20 per centum in lieu of prior rates of 25 per centum on photographic apparatus and 15 per centum on film.

1944 Amendment. Subsec. (a) (2) amended by Act Feb. 25, 1944, which added sentence beginning "The tax imposed", etc.

Subsec. (a) (3) amended by Act Feb. 25, 1944, which inserted "and" before "electric mixers, whippers, and juicers", and struck out "and household type electric vacuum cleaners".

1942 Amendment. Subsecs. (4) and (6) amended by Act Oct. 21, 1942.

Effective Date of 1954 Amendments. Effective date of amendments of subsec. (a) (1) (3) (4) (10) of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of this title.

Effective Date of 1952 Amendment. Section 1(b) of Act May 21, 1952 provided that the amendment of subsec. (a) (4) by section 1(a) of said Act May 21, 1952, should be effective as of Nov. 1, 1951.

Effective Date of 1951 Amendment. Section 490 of Act Oct. 20, 1951, as amended by section 4 of Act Oct. 31, 1951, c. 661, 65 Stat. 736, provided that amendment of subsec. (a) (3) of this section, by said Act Oct. 20, 1951, should, in so far as such amendment relates to electric heating pads, take effect on April 1, 1952. Balance of amendment of said subsection by such Act Oct. 20, 1951 to take effect on first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 3400 of this title.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made effective on the first day of the first month which begins more than 10 days after the date of the enactment of this Act by section 301 thereof.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Floor Stocks Refunds on Bulbs. Section 486(b) of Act Oct. 20, 1951, provided that:

"(1) With respect to any photo-flash or other bulb upon which the tax imposed under section 3406(a) (4) of the Internal Revenue Code [section 3406(a) (4) of this title] has been paid, and which on the effective date specified in section 489 of this Act is held by any person and intended for sale, or for use in the manufacture or production of any article intended for sale, there shall be credited or refunded to the manufacturer or producer of such bulb (without interest), subject to such regulations as may be prescribed by the Secretary, an amount equal to so much of the tax so paid as has been paid by such manufacturer or producer to such person as reimbursement for the elimination on such effective date of the tax on such bulb, if claim for such credit or refund is filed with the Secretary prior to the expiration of three months after such effective date.

No credit or refund shall be allowable under this paragraph for any bulb held by any person for sale which was purchased by such person as a component part of any other article.

"(2) No person shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in paragraph (1) as the regulations under paragraph (1) shall prescribe.

"(3) All provisions of law, including penalties, applicable with respect to the tax imposed under section 3406(a) (4) of the Internal Revenue Code shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the credits and refunds provided for in this subsection to the same extent as if such credits or refunds constituted credits or refunds of such taxes."

"Section 489" of such Act, referred to above, is an amendatory section and prescribes no effective date. Section 490 of such Act prescribes the effective date of the amendments by that Act to subsec. (a) (4) of this section, and is set out in note under section 3400 of this title.

Termination of War Tax Rates. The effective period of the War tax rates provided for in section 1650 of this title, which had temporarily affected the permanent rate specified in subsec. (a) (10) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954. See such section, and notes thereunder; and for effective date of such amendment to section 1650, in so far as it affects the rate imposed by subsec. (a) (10) of this section, see note under section 1651 of this title.

Termination of Taxes under Subsecs. (a) (5, 7-9). Section 611 of Act Oct. 21, 1942, provided as follows:

"The taxes imposed by the following provisions shall not apply to the sale, by the manufacturer, producer, or importer, after the effective date of this Title [Title VI of Revenue Act of 1942], of the articles taxable under such provisions:

"(a) Section 3406(a) (5) of the Internal Revenue Code (relating to tax on electric signs).

"(b) Section 3406(a) (7) of the Internal Revenue Code (relating to tax on rubber articles).

"(c) Section 3406(a) (8) of the Internal Revenue Code (relating to tax on washing machines).

"(d) Section 3406(a) (9) of the Internal Revenue Code (relating to tax on optical equipment)."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055. See, also, Act May 21, 1952, 1952 U.S.Code Cong. and Adm.News, p. 1453.

§ 3407. Tax on firearms, shells, and cartridges

There shall be imposed upon firearms, shells, and cartridges, sold by the manufacturer, producer, or importer, a tax equivalent to 11 per centum of the price for which so sold. The tax imposed by this section shall not apply (1) to articles sold for the use of any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, or (2) to pistols and revolvers.

The taxes imposed by this section shall not apply to any firearm on which the tax provided by section 2720 has been paid.

The provisions of section 3452 (relating to expiration of taxes) shall not apply to the tax imposed by this section. 53 Stat. 412, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 2, 53 Stat. 863; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (18), 55 Stat. 707; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (3), 58 Stat. 64.

Historical Note

1944 Amendment. Act Feb. 25, 1944, amended second sentence of first par. by changing "the United States, any State, Territory, or possession of the United States," to read "any State, Territory of the United States."

1941 Amendment. Act Sept. 20, 1941, substituted "11 per centum" for "10 per centum".

1939 Amendment. Last par. added by Act June 29, 1939.

Effective Date of 1944 Amendment. Amendment of section by Act Feb. 25, 1944, § 307(a) (4), was made applicable by section 307(b) (2) thereof which provided as follows: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(2) The amendments of sections 2700(b) (1), 3407, and 3442(3) (insofar as such section relates to the articles enumerated in section 3404) of the Internal Revenue Code, shall be applicable to sales made on or after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war. Such amendments shall not apply to deny an exemption otherwise applicable with respect to any article sold pursuant to a contract entered into prior to the effective date of the amendments, or to any agreement or change order supplemental to such contract bearing the same Government contract number.'"

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after, the date of enactment of that Act, by section 621(b) thereof.

Termination of Hostilities. The termination of hostilities of World War II, for the purpose of determining the application of this section as amended by Act Feb. 25, 1944, was proclaimed at 12 o'clock noon of December 31, 1940, by Proc.No.2714, 12 F.R. 1, set out as note under section 601 of Appendix to Title 50, War and National Defense.

Definition. Subsec. (b) (6) of Act Feb. 25, 1944, § 307, provided as follows: "(6) For the purposes of this subsection the term 'date of the termination of hostilities in the present war' means the date proclaimed by the President as the date of such termination, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier."

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 576, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3408. Tax on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes

(a) **Imposition of tax.** There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equal to 10 per centum of the price for which so sold: Mechanical pencils, fountain pens, and ball point pens; mechanical lighters for cigarettes, cigars, and pipes.

(b) **Exemption if article taxable as jewelry.** No tax shall be imposed under this section on any article taxable under section 2400 (relating to jewelry tax). If any article, on the sale of which tax has been paid under this section, is further manufactured or processed resulting in an article taxable under section 2400, the person who sells such article at retail shall, in the computation of the retailers' excise tax due on such sale, be entitled to a credit or refund in an amount equal to the tax paid under this section. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 487, 65 Stat. 536, amended Mar. 31, 1954, c. 126, Title III, § 302, 68 Stat. 40.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which substituted "10 per centum" for "15 per centum".

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of this title.

Effective Date. Section to take effect on first day of first month which begins more than 10 days after Oct. 20, 1951, see note under section 3400 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amandatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055.

§ 3409. Tax on matches

(a) **Manufacturers' Tax.** There shall be imposed upon matches sold by the manufacturer, producer, or importer, a tax of 2 cents per 1,000 matches but not more than 10 per centum of the price for which so sold, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5½ cents per 1,000 matches.

(b) **Floor Stocks Tax.** On matches subject to tax under subsection (a) which, on October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2 cents per thousand matches. The tax shall not apply to matches in retail stocks held at the place where intended to be sold or disposed of. The tax shall not apply to matches held for sale by the manufacturer, producer, or importer thereof, nor to fancy wooden matches or wooden matches having a stained, dyed, or colored stick or stem. 53 Stat. 412, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 547, 55 Stat. 713; Mar. 31, 1954, c. 126, Title III, § 303, 68 Stat. 40.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Mar. 31, 1954, which substituted "2 cents per 1,000 matches but not more than 10 per centum of the price for which so sold" for "2 cents per 1,000 matches".

1941 Amendment. Act Sept. 20, 1941, amended section in its entirety.

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) of this section by Act Mar. 31, 1954, as April 1, 1954, see note under section 1651 of this title.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on,

and applicable only with respect to the period beginning with Oct. 1, 1941, by section 550(a) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date,

see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055.

§ 3411.1 Repealed. Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 488(a), 65 Stat. 536.

1 So in original. There is no section 3410.

Historical Note

Section, Act Feb 10, 1939, c. 2, § 3411, 53 Stat. 412, as amended by Acts Sept. 20, 1941, c. 412, Title V, § 521(a) (19), 55 Stat. 707; Feb. 25, 1944, c. 63, Title III, § 307(a) (4), 58 Stat. 64, imposed tax on electrical energy for domestic or commercial consumption.

Effective Date. Section 488(b) of Act Oct. 20, 1951, 2:07 p. m., E.S.T., c. 521, Title IV, 65 Stat. 536, provided that:

"(1) Except as provided in paragraph (2), the provisions of subsection (a) [repealing this section and sections 3441(d) and 3447(c) of this title] shall apply to electrical energy sold on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act [Oct. 20, 1951].

"(2) In the case of electrical energy sold which is billed to the customer for a period beginning before the effective date specified in paragraph (1) and ending on or after such date, the provisions of subsection (a) shall apply to that portion of the amount billed for the electrical energy sold during such period which the number of days in such period on and after such effective date bears to the total number of days in such period. This section shall not apply to electrical energy sold before such effective date for which a bill was rendered prior to such date."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Section As Originally Enacted:

"§ 3411. Tax on electrical energy for domestic or commercial consumption

"(a) There shall be imposed upon electrical energy sold for domestic or commercial consumption and not for resale a tax equivalent to 3 per centum of the price for which so sold, to be paid by the vendor under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The sale of electrical energy to an owner or lessee of a building, who purchases such electrical energy for resale to the tenants therein, shall for the purposes of this section be considered as a sale for consumption and not for resale, but the resale to the tenant shall not be considered a sale for consumption.

"(b) The provisions of sections 3441, 3444, and 3447 shall not be applicable with respect to the tax imposed by this section.

"(c) No tax shall be imposed under this section upon electrical energy sold to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia. None of the provisions of this section shall apply to publicly owned electric and power plants, or to electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification. The right to exemption under this subsection shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3412. Tax on gasoline

(a) There shall be imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 2 cents a gallon, except that under regulations prescribed by the Commissioner with the approval of the Secretary the tax shall not apply in the case of sales to a producer of gasoline. On and after April 1, 1955, the tax imposed by this section shall be 1½ cents a gallon in lieu of 2 cents a gallon.

(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this chapter be considered a sale. Any person to whom gasoline is sold tax-free under this section shall be considered the producer of such gasoline.

(c) As used in this section—

(1) the term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer.

(2) the term "gasoline" means all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline).

(d) Every person subject to tax under this section or section 3413 shall, before incurring any liability for tax under such sections register with the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, with the collector at Baltimore, Maryland) and shall give a bond, to be approved by such collector, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections. Such bond shall be in such sum as the collector may require in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, but not less than \$2,000. The collector may from time to time require new or additional bond in accordance with this subsection. Every person who fails to register or give bond as required by this subsection, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by this subsection, or who willfully makes any false statement in an application for registration under this subsection, shall upon conviction thereof be fined not more than \$5,000 or imprisoned not more than five years, or both, together with the costs of prosecution. If the Commissioner finds that any manufacturer or producer has at any time evaded any Federal tax on gasoline or lubricating oil, he may revoke the registration of such manufacturer or producer, and no sale to, or for resale to, such manufacturer or producer thereafter shall be tax-free under section 3413, this section, or section 3442, but such manufacturer or producer shall not be relieved of the requirement of giving bond under this subsection.

(e) Under regulations prescribed by the Commissioner with the approval of the Secretary, records required to be kept with respect to taxes under section 3413, or this section, and returns, reports, and statements with respect to such taxes filed with the Commissioner or a collector, shall be open to inspection by such officers of any State or Territory or political subdivision thereof or the District of Columbia as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils. The Commissioner and each collector shall furnish to any of such officers, upon written request, certified copies of any such statements, reports, or returns filed in his office upon the payment of a fee of \$1 for each one hundred words or fraction thereof in the copy or copies requested.

(f) **1951 Floor stocks tax.** On gasoline subject to tax under this section which, on the effective date of section 489(a) of the Revenue Act of 1951, is held and intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of $\frac{1}{2}$ cent per gallon. The tax shall not apply to gasoline in retail stocks held at the place where intended to be sold at retail, nor to gasoline held for sale by a producer or importer of gasoline. The provisions of section 3443 shall be applicable to the floor stocks tax imposed by this subsection so as to entitle, subject to all the provisions of such section, (1) any manufacturer or producer to a refund or credit of such tax under subsection (a) (1) of such section, and (2) any person paying such floor stocks tax to a refund or credit thereof where gasoline is by such person or any other person used or

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resold for any of the purposes specified in subparagraphs (A) (i), (ii), and (iii) of subsection (a) (3) of such section.

(g) Floor stocks refunds on gasoline

(1) **In general.** With respect to any gasoline taxable under this section, upon which tax (including floor stocks tax) at the applicable rate has been paid, and which, on April 1, 1955, is held and intended for sale by any person, there shall be credited or refunded (without interest) to the producer or importer who paid the tax, subject to such regulations as may be prescribed by the Secretary, an amount equal to so much of the difference between the tax so paid and the amount of tax made applicable to such gasoline on and after April 1, 1955, as has been paid by such producer or importer to such person as reimbursement for the tax reduction on such gasoline, if claim for such credit or refund is filed with the Secretary prior to July 1, 1955. No credit or refund shall be allowable under this subsection with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(2) **Limitation on eligibility for credit or refund.** No producer or importer shall be entitled to a credit or refund under paragraph (1) unless he has in his possession satisfactory evidence of the inventories with respect to which he has made the reimbursements described in such paragraph, and establishes to the satisfaction of the Secretary with respect to the quantity of gasoline as to which credit or refund is claimed under such paragraph, that on or after April 1, 1955, such quantity of gasoline was sold to the ultimate consumer at a price which reflected the amount of the tax reduction.

(3) **Penalty and administrative procedures.** All provisions of law, including penalties, applicable in respect of the tax imposed under this section shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the credits and refunds provided for in this subsection to the same extent as if such credits or refunds constituted credits or refunds of such taxes. 53 Stat. 413, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521(a) (20), 55 Stat. 707; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 489, 65 Stat. 536; Mar. 31, 1954, c. 126, Title V, § 507(a) (1), Title VI, § 601(a) (6), (b) (2), 68 Stat. 44-46.

Historical Note

References in Text. "Section 489(a) of the Revenue Act of 1951", referred to in subsec. (f), is Act Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 489(a), 65 Stat. 536. Such section 489(a) amended subsection (a) of this section in the manner described in 1951 amendment note below. For effective date of such amendments, see effective date note below.

1954 Amendments. Subsec. (a) amended by Act Mar. 31, 1954, § 601(a) (6), which in second sentence substituted "April 1, 1955" for "April 1, 1954".

Subsec. (c) (2) amended by Act Mar. 31, 1954, § 507(a) (1), to omit from the definition of gasoline the reference to benzol, benzene, naphtha and other liquids, and to omit the provision excepting such products (other than gasoline) when sold for use otherwise than as a fuel for motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, and to omit the provision that excluded kerosene, gas oil and fuel oil from the definition, such provisions now being covered

by sections 2450 et seq., of this title. See, also, 1954 amendment note under section 3443 of this title.

Subsection (g) (1) amended by Act Mar. 31, 1954, § 601(b) (2), which substituted "April 1, 1955" for "April 1, 1954" in two places, and substituted "July 1, 1955" for "July 1, 1954".

Subsec. (g) (2) amended by Act Mar. 31, 1954, § 601(b) (2), which substituted "April 1, 1955" for "April 1, 1954".

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 489(a), which substituted "2 cents" in lieu of "1½ cents", and added second sentence.

Subsecs. (f) and (g) added by Act Oct. 20, 1951, § 489(b).

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, to increase tax on gasoline from 1 cent to 1½ cents a gallon.

Effective Date of 1954 Amendment. Effective date of amendment of this section by Act Mar. 31, 1954, as May 1, 1954, see note preceding section 2450 of this title.

Effective Date of 1951 Amendment. Amendment of this section by Act Oct. 20, 1951 to take effect on first day of the first month which begins more than 10 days after Oct. 20, 1951, see note under section 3400 of this title

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amend-

ment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

§ 3413. Tax on lubricating oils

There shall be imposed upon lubricating oils sold in the United States by the manufacturer or producer a tax at the rate of 6 cents a gallon (except that, in the case of cutting oils, the tax shall not exceed 10 per centum of the price for which so sold), to be paid by the manufacturer or producer. Every person liable for tax under this section shall register and file bond as provided in section 3412(d). Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax shall be imposed under this section upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him, but for the purposes of this chapter such vendee shall be considered the manufacturer or producer of such lubricating oils. For the purposes of this section, the term "cutting oils" means oils used primarily in cutting and machining operations (including forging, drawing, rolling, shearing, punching, and stamping) on metals and known commercially as cutting oils. 53 Stat. 414, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 521 (a) (21), 65 Stat. 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 608, 56 Stat. 977; Mar. 31, 1954, c. 126, Title III, § 304, 68 Stat. 40.

Historical Note

1954 Amendment. Act Mar. 31, 1954, amended section by inserting "(except that, in the case of cutting oils, the tax shall not exceed 10 per centum of the price for which so sold)" after "6 cents a gallon", and by adding the sentence defining "cutting oils".

1942 Amendment. Rate changed from $4\frac{1}{2}$ to 6 cents by Act Oct. 21, 1942.

1941 Amendment. Act Sept. 20, 1941, substituted " $4\frac{1}{2}$ cents" for "4 cents".

Effective Date of 1954 Amendment. Effective date of amendment of this section by Act Mar. 31, 1954, as April 1, 1954 see note under section 1651 of this title.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which

began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2055.

§ 3414. Publicity of returns

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. 53 Stat. 414.

§ 3415. Effective date of subchapter

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 414.

§ 3416

MANUFACTURERS' EXCISE TAXES

§ 3416. Floor stocks refund on refrigerators, quick-freeze units, and electric, gas, and oil household appliances

(a) **In general.** Where before April 1, 1954, any article subject to the tax imposed by section 3405(a), section 3405(b), or section 3406(a) (3) has been sold by the manufacturer, producer, or importer, and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the tax made applicable to such article on and after April 1, 1954, if such manufacturer, producer, or importer—

(1) has paid such amount as reimbursement to the dealer who held such article on April 1, 1954; and

(2) files claim for such credit or refund on or before the sixtieth day after the date of the enactment of H.R. 3712, Eighty-fourth Congress.

(b) **Definition of dealer.** As used in this section, the term "dealer" includes a wholesaler, jobber, distributor, or retailer. For the purposes of this section, an article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(c) **Limitation on eligibility.** No person shall be entitled to credit or refund under this section unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in subsection (a) as may be required by regulations prescribed under this section.

(d) **Penalties and administrative procedures.** All provisions of law, including penalties, applicable in respect of the taxes imposed under sections 3405(a), 3405(b), and 3406(a) (3) shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the credits and refunds provided for in this section to the same extent as if such credits or refunds constituted credits or refunds of such taxes. Added Mar. 31, 1954, c. 126, Title III, § 305(b), 68 Stat. 40, amended Aug. 9, 1955, c. 663, 69 Stat. 594.

Historical Note

References in Text. The date of the enactment of H.R. 3712, Eighty-fourth Congress, referred to in subsec. (a) (2), is August 9, 1955.

1955 Amendment. Subsec. (a) (2) amended by Act Aug. 9, 1955, which substituted "on or before the sixtieth day after the date of the enactment of H.R.

3712, Eighty-fourth Congress" for "before August 1, 1954".

Effective Date. Effective date of this section, as April 1, 1954, see note under section 1851 of this title.

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055.

SUBCHAPTER B.—IMPORT TAXES

PART I.—SPECIAL PROVISIONS

§ 3420. Imposition of tax

In addition to any other tax or duty imposed by law, there shall be imposed upon the following articles imported into the United States unless treaty provisions of the United States otherwise provide a tax at the rates specified in sections 3422 to 3425, inclusive. 53 Stat. 414.

§ 3422.¹ Petroleum and derivatives

Crude petroleum, $\frac{1}{2}$ cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, $\frac{1}{2}$ cent per gallon; gasoline or other motor fuel, $2\frac{1}{2}$ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. The tax on the articles described in this section shall apply only with respect to the importation of such articles. 53 Stat. 414.

¹ So in original. There is no section 3421.

§ 3423. Coal

Coal of all sizes, grades, and classifications (except culm and duff), coke manufactured therefrom; and coal or coke briquettes, 10 cents per 100 pounds. The tax on the articles described in this section shall apply only with respect to the importation of such articles, and shall not be imposed upon any such article if during the preceding calendar year the exports of the articles described in this section from the United States to the country from which such article is imported have been greater in quantity than the imports into the United States from such country of the articles described in this section. 53 Stat. 414.

§ 3424. Lumber

(a) Lumber, rough, or planed or dressed on one or more sides, except flooring made of maple (except Japanese maple), birch, and beech, \$3 per thousand feet, board measure; dowels made of fir, spruce, pine, hemlock, larch, or cedar (except cedar commercially known as Spanish cedar), 75 cents per thousand feet, board measure; dowels made of Japanese maple, Japanese white oak, teak, box, ebony, lancewood, or *lignum vitae*, \$3 per thousand feet, board measure; dowels made of other wood, \$1.50 per thousand feet, board measure; but the tax on the articles described in this section shall apply only with respect to the importation of such articles. The tax imposed by this subsection shall not apply to lumber of Northern white pine (*pinus strobus*), Norway pine (*pinus resinosa*), Western white spruce, and Engelmann spruce.

(b) In determining board measure for the purposes of this section no deduction shall be made on account of planing, tonguing, and grooving. As used in this section, the term "lumber" includes sawed timber. This subsection shall apply (1) unless in conflict with any international obligation of the United States or (2) if so in conflict, then on the termination of such obligation otherwise than in connection with the undertaking by the United States of a new obligation which continues such conflict. 53 Stat. 415, amended Sept. 27, 1950, c. 1061, § 2(a), 64 Stat. 1075; Aug. 16, 1954, c. 740, § 3, 68 Stat. 731.

Historical Note

1954 Amendment. Subsec. (a) amended by Act Aug. 16, 1954, which made dowels of certain species of wood subject to an import tax.

1950 Amendment. Subsec. (a) amended by Act Sept. 27, 1950, to exempt Engelmann spruce from the import tax.

Effective Date of 1954 Amendment. Amendment of section as effective Aug. 16, 1954, see note under par. 401 of section 1001 of Title 19, Customs Duties.

Effective Date of 1950 Amendment. Section 2(b) of Act Sept. 27, 1950, provided that: "The amendment made by this section [amendment of subsec. (a) of this

section] shall be applicable with respect to lumber entered for consumption or withdrawn from warehouse for consumption on or after the tenth day following the date of the enactment of this Act [Sept. 27, 1950]."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 27, 1950, see 1950 U.S. Code Cong. Service, p. 3958.

§ 3425. Copper

Copper-bearing ores and concentrates and articles provided for in paragraphs 316, 380, 381, 387, 1620, 1634, 1657, 1658, or 1659 of the Tariff Act of 1930, 4 cents per pound on the copper contained therein: *Provided*, That no tax under this section shall be imposed on copper in any of the foregoing which is lost in metallurgical processes: *Provided further*, That ores or concentrates usable as a flux or sulphur reagent in copper smelting and/or converting and having a copper content of not more than 15 per centum, when imported for fluxing purposes, shall be admitted free of said tax in an aggregate amount of not to exceed in any one year 15,000 tons of copper content. All articles dutiable under the Tariff Act of 1930,¹ not provided for heretofore in this section, in which copper (including copper in alloys) is the component material of chief value, 3 cents per pound. All articles dutiable under the Tariff Act of 1930,¹ not provided for heretofore in this section, containing 4 per centum or more of copper by weight, 3 per centum ad valorem or $\frac{3}{4}$ of 1 cent per pound, whichever is the lower. The tax on the articles described in this section shall apply only with respect to the importation of such articles. The Secretary is authorized to prescribe all necessary regulations for the enforcement of the provisions of this section. 53 Stat. 415.

Historical Note

References in Text. The Tariff Act of 1930, referred to in the text, is classified to chapter 4 of Title 19, Customs Duties.

Paragraphs 316, 380, 381, 387, 1620, 1634, 1657, 1658, and 1659 of the Tariff Act of 1930, referred to in the text, are classified to paragraphs 316, 380, 381, and 387 of section 1001 and paragraphs 1620, 1634, 1657, 1658 and 1659 of section 1201 of Title 19, Customs Duties.

Effect of Tax Suspension on Scrap Metal or Copper Scrap. Section 2 of Act Aug. 7, 1953, c. 354, 67 Stat. 488, provided that the extension of the tax suspension on scrap metal by section 1 of said Act Aug. 7, 1953, set out as a note under par. 301 of section 1001 of Title 19, Customs Duties, should in no wise affect in any way the application of Act May 22, 1951, set out as a note under this section, to copper scrap.

Suspension of Tax on Scrap Metals until June 30, 1952. Act Mar. 13, 1942, c. 180, 56 Stat. 171, as amended Aug. 8, 1947, c. 515, § 1, 61 Stat. 917; June 8, 1948, c. 426, 62 Stat. 344; Sept. 30, 1950, c. 1119, § 1, 64 Stat. 1093, provided that:

"Sec. 1. (a) No duties or import taxes shall be levied, collected, or payable under the Tariff Act of 1930, as amended [section 1001 of Title 19], or under section 3425 of the Internal Revenue Code [this section] with respect to metal scrap, or relaying and rerolling rails.

"(b) The word 'scrap', as used in this Act, shall mean all ferrous and nonferrous materials and articles, of which ferrous or nonferrous metal is the component material of chief value, which are second-hand or waste or refuse, or are obsolete, defective or damaged, and which are fit only to be remanufactured.

"Sec. 2. Articles of which metal is the component material of chief value,

other than ores or concentrates or crude metal, imported to be used in remanufacture by melting, shall be accorded entry free of duty and import tax, upon submission of proof, under such regulations and within such time as the Secretary of the Treasury may prescribe, that they have been used in remanufacture by melting: *Provided*, however, That nothing contained in the provisions of this section shall be construed to limit or restrict the exemption granted by section 1 of this Act."

Suspension of Taxes. Act May 22, 1951, c. 108, 65 Stat. 45, as amended Feb. 14, 1953, c. 4, 67 Stat. 4; June 30, 1954, c. 424, 68 Stat. 330, provided:

"That the import tax imposed under section 3425 of the Internal Revenue Code [this section] shall not apply with respect to articles (other than copper sulfate and other than composition metal provided for in paragraph 1657 of the Tariff Act of 1930, as amended [section 1201, par. 1657 of Title 19] which is suitable both in its composition and shape, without further refining or alloying, for processing into castings, not including as castings ingots or similar cast forms) entered for consumption or withdrawn from warehouse for consumption during the period beginning April 1, 1951, and ending with the close of June 30, 1955: *Provided*, That when, for any one calendar month during such period, the average market price of electrolytic copper for that month, in standard shapes and sizes, delivered Connecticut Valley, has been below 24 cents per pound, the Tariff Commission, within fifteen days after the conclusion of such calendar month, shall so advise the President, and the President shall, by proclamation, not later than twenty days after he has been so advised by the Tariff Commission, revoke such suspension of the import tax imposed under

section 3425 of the Internal Revenue Code [this section].

"In determining the average market price of electrolytic copper for each calendar month, the Tariff Commission is hereby authorized and directed to base its findings upon sources commonly resorted to by the buyers of copper in the usual channels of commerce, including, but not limited to, quotations of the market price for electrolytic copper, in standard shapes and sizes, delivered

Connecticut Valley, reported by the Engineering and Mining Journal's 'Metal and Mineral Markets'."

Similar provisions were contained in Acts Mar. 31, 1949, c. 44, 63 Stat. 30 and Apr. 29, 1947, c. 45, 61 Stat. 56.

Effective Date of Scrap Metal Tax Suspension. See section 2 of Act Sept. 30, 1950, c. 1119, 64 Stat. 1093, as amended, set out as note under section 1001, par. 301, of Title 19, Customs Duties.

PART II.—SPECIAL ADMINISTRATIVE PROVISIONS

§ 3430. Applicability of tariff provisions

The tax imposed by section 3420 shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, 46 Stat. 590, 672 (U.S.C. Title 19, c. 4) and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that—

(a) the value on which such tax shall be based shall be the sum of
(1) the dutiable value (under section 503 of such Act) of the article, plus
(2) the customs duties, if any, imposed thereon under any provision of law;

(b) for the purposes of section 489 of such Act (relating to additional duties in certain cases of undervaluation) such tax shall not be considered an ad valorem rate of duty or a duty based upon or regulated in any manner by the value of the article, and for the purposes of section 336 of such Act (the so-called flexible tariff provision) such tax shall not be considered a duty;

(c) no drawback of such tax (except tax paid upon the importation of an article described in sections 3422, 3423, 3424, and 3425) shall be allowed under section 313(a), (b), or (f) of the Tariff Act of 1930 or any provision of law allowing a drawback of customs duties on articles manufactured or produced with the use of duty-paid materials;

(d) such tax (except tax under sections 3422 to 3425, inclusive) shall be imposed in full notwithstanding any provision of law granting exemption from or reduction of duties to products of any possession of the United States; and for the purposes of taxes under section 3422 to 3425, inclusive, the term "United States" includes Puerto Rico. 53 Stat. 415.

Historical Note

References in Text. Such act, wherever appearing, has reference to Tariff Act of 1930, which is classified to chapter 4 of Title 19, Customs Duties.

Sections 503, 489 and 336, and 313(a), (b), and (f) of such act, referred to in clauses (a-c), refer to sections of the Tariff Act of 1930. Said sections are classified to sections 1503, 1489 and 1336, and 1313(a), (b), and (f) of Title 19, Customs Duties, respectively.

§ 3431. Rules and regulations

The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this subchapter. 53 Stat. 416.

§ 3432. Cross reference

For tax on importation of sugar, see section 3500. 53 Stat. 416.

SUBCHAPTER C.—GENERAL ADMINISTRATIVE PROVISIONS

§ 3440. Definition of sale

For the purposes of this chapter the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article. 53 Stat. 416, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 553(a), 55 Stat. 720.

Historical Note

1941 Amendment. Act Sept. 20, 1941, inserted "including any * * *, or importer" preceding "shall be considered", and substituted "a taxable" for "the" preceding "sale".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 3441. Sale price

(a) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations.

(b) If an article is—

(1) sold at retail;

(2) sold on consignment; or

(3) sold (otherwise than through an arm's length transaction) at less than the fair market price;

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Commissioner.

(c) (1) In the case of (A) a lease, (B) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, (C) a conditional sale, or (D) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

(2) In the application of paragraph (1) to the articles with respect to which the rate of tax is increased by the Revenue Act of 1941 or by the Revenue Act of 1940, where the lease, contract of sale, or conditional sale, and delivery thereunder—

(A) was made before July 1, 1940, the total tax referred to in paragraph (1) shall be the tax at the rate in force on June 30, 1940, and not at any greater rate; or

(B) was made after June 30, 1940, and before October 1, 1941, the total tax referred to in paragraph (1) shall be the tax at the rate in force on September 30, 1941, and not at any greater rate.

(3) Despite the provisions of paragraph (1), no tax shall be imposed with respect to any article not taxable under the law in existence on the day before the date of the enactment of the Revenue Act of 1941, if with respect to such article the lease, contract for sale, or conditional sale, and delivery thereunder, was made before October 1, 1941.

(d) Repealed. Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 488(a), 65 Stat. 536.

53 Stat. 416, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 549, 55 Stat. 715; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 618(b), 56 Stat. 979; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 488(a), 65 Stat. 536.

Historical Note

References in Text. Revenue Act of 1941, referred to in subsec. (c) (2), is Act Sept. 20, 1941, c. 412, 55 Stat. 687. See volumes "Title 26—Internal Revenue Acts".

Revenue Act of 1940, referred to in subsec. (c) (2), is Act June 25, 1940, c. 419, 54 Stat. 516. See volumes "Title 26—Internal Revenue Acts".

Date of enactment of Revenue Act of 1941, referred to in subsec. (c) (3), was Sept. 20, 12:15 p. m., E.S.T., 1941.

1951 Amendment. Subsec. (d) repealed by Act Oct. 20, 1951. Prior to such repeal, said subsec. provided: "The provisions of this section shall not be applicable with respect to the tax imposed by section 3411.

1942 Amendment. Subsec. (c) (1) amended by Act Oct. 21, 1942, which inserted clause (D).

1941 Amendment. Subsec. (c) amended by Act Sept. 20, 1941.

Effective Date of 1951 Amendment. Effective date of repeal of subsec. (d) of

this section by Act Oct. 20, 1951, see note under former section 3411 of this title.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3442. Tax-free sales

Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—

(1) for use by the vendee as material in the manufacture or production of, or as a component part of, an article enumerated in this chapter;

(2) for resale by the vendee for such use by his vendee, if such article is in due course so resold;

(3) for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia.

For the purposes of this chapter the manufacturer or producer to whom an article is sold under paragraph (1) or resold under paragraph (2) shall be considered the manufacturer or producer of such article. The provisions of paragraphs (1) and (2) shall not apply with respect to tires, inner tubes, or automobile radio or television receiving sets taxable under section 3404. 53 Stat. 416, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 553(d), 55 Stat. 721; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (5), 58 Stat. 65; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 605(c) (2), 64 Stat. 965.

Historical Note

1950 Amendment. Act Sept. 23, 1950, amended section by substituting "automobile radio or television receiving sets" in lieu of "automobile radio".

1944 Amendment. Subpar. (3) of first par. amended by Act Feb. 25, 1944, which changed "the United States, any State, Territory," to read "any State, Territory of the United States,".

1941 Amendment. Act Sept. 20, 1941, inserted matter relating to automobile radios taxable under section 3404.

Effective Date of 1950 Amendments. Amendment of section by Act Sept. 23, 1950, as effective only with respect to articles sold on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950. See note set out under section 2412 of this title.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, was made applicable by section 307(b) (1), (b) (2) thereof which provided as follows:

"Despite the provisions of section 301, the amendments made by this section shall apply as follows:

"(1) The amendments of sections 2406(a), 3411(c), and 3442(3) (except as such section relates to the articles enumerated in section 3404) of the Internal Revenue Code shall be applicable to sales made on or after the first day of the first month which begins three months or more after the date of the enactment of this Act. Such amendments shall not apply to deny an exemption otherwise applicable with respect to any article sold pursuant to a contract entered into prior to the effective date of the amendments, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

"(2) The amendments of sections 2700 (b) (1), 3407, and 3442(3) (insofar as such section relates to the articles enumerated in section 3404) of the Internal Revenue Code, shall be applicable to sales made on or after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war. Such amendments shall not apply to deny an exemption otherwise applicable with respect to any article sold pursuant to a contract entered into prior to the effective date of the amendments, or to any agreement or change order supplemental to such contract bearing the same Government contract number."

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Definition. Subsec. (b) (6) of Act Feb. 25, 1944, § 307, provided as follows: "(6) For the purposes of this subsection the term 'date of the termination of hostilities in the present war' means the date proclaimed by the President as the date of such termination, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier."

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 576, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Termination of Hostilities. The termination of hostilities of World War II, for the purpose of determining the application of subpar. (3) of this section as amended by Act Feb. 25, 1944, cited to text, was proclaimed at 12 o'clock noon of December 31, 1946, by Proc.No.2714, 12 F.R. 1, set out as note under section 601 of Appendix to Title 50, War and National Defense.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 3443. Credits and refunds

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

(1) to a manufacturer or producer, in the amount of any tax under this chapter which has been paid with respect to the sale of—

(A) any article (other than a tire, inner tube, or automobile radio or television receiving set taxable under section 3404) purchased by

him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under this chapter has been paid, or which has been sold free of tax by virtue of section 3442, relating to tax-free sales;

(B) any article described in section 3404(b) purchased by him and used by him as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers have been sold by him to the United States for its exclusive use.

(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(3) to a manufacturer, producer, or importer, in the amount of tax paid by him under this chapter with respect to the sale of any article to any vendee, if the manufacturer, producer, or importer has in his possession such evidence as the regulations may prescribe that—

(A) such article was, by any person—

(i) resold for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or of the District of Columbia, or, in the case of musical instruments embraced in section 3404 (d), resold for the use of any religious or nonprofit educational institution for exclusively religious or educational purposes;

(ii) used or resold for use for any of the purposes, but subject to the conditions, provided in section 3451;

(iii) in the case of lubricating oils, used or resold for nonlubricating purposes;

(iv) in the case of unexposed motion picture films, used or resold for use in the making of news reel motion picture films.

(v) in the case of articles taxable under section 3403(c) (other than spark plugs, storage batteries, leaf springs, coils, timers, and tire chains), used or resold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under subsection (a) or (b) of section 3403);

(vi) in the case of a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations, resold, to the United States for its exclusive use.

(B) The manufacturer, producer, or importer has repaid or agreed to repay the amount of such tax to the ultimate vendor or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

(b) Credit or refund under subsection (a) shall be allowed or made only upon compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

(c) Interest shall be allowed at the rate of 6 per centum per annum with respect to any amount of tax under this chapter credited or refunded, except that no interest shall be allowed with respect to any amount of tax credited or refunded under the provisions of subsection (a) hereof.

(d) No overpayment of tax under this chapter shall be credited or refunded (otherwise than under subsection (a)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the

amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund. 53 Stat. 417, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 553(c), (d), 55 Stat. 721; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (6), 58 Stat. 65; July 3, 1948, c. 829, § 6, 62 Stat. 1260; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, §§ 605(c), (3), 609, 64 Stat. 965, 966; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 481(f), 482(c), (d), 65 Stat. 532; Mar. 31, 1954, c. 126, Title V, § 507(a) (2), 68 Stat. 44.

Historical Note

1954 Amendment. Subsec. (a) (3) (A) amended by Act Mar. 31, 1954, which repealed a clause (iii) relating to credit or refund "in the case of products [formerly] embraced" in subsec. (c) (2) of section 3412 of this title used or resold for use otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the production of such fuel, with an exception with respect to gasoline (the provisions of such clause now being covered by sections 2450 et seq. of this title), and redesignated clauses (iv), (v), (vi), and (vii) as "(iii)", "(iv)", "(v)", and "(vi)", respectively.

1951 Amendment. Subsec. (a) (1) amended by Act Oct. 20, 1951, § 482(c), to allow a manufacturer or producer of navigation receivers a credit or refund of tax paid on articles taxable under section 3404(b) purchased for use by him in the manufacture or production of, or as a component part of, navigation receivers if such receivers have been sold by him to the United States for its exclusive use.

Subsec. (a) (3) (A) amended by Act Oct. 20, 1951, §§ 481(f), 482(d), which added clauses (vi) and (vii).

1950 Amendment. Subsec. (a) (1) amended by Act Sept. 23, 1950, § 605(c) (3), which substituted "automobile radio or television receiving set" in lieu of "automobile radio" wherever appearing.

Subsec. (a) (3) (a) (1) amended by Act Sept. 23, 1950, to make it subject to the provisions of section 3451 of this title.

1948 Amendment. Subsec. (a) (3) (A) (i) amended by Act July 3, 1948, which added provisions relating to musical instruments.

1944 Amendment. Subsec. (a) (3) (A) (i) amended by Act Feb. 25, 1944, which changed "the United States, any State, Territory of the United States," to read "any State, Territory of the United States,".

1941 Amendment. Subsec. (a) (1) amended and subsec. (a) (3) (A) (v) added by Act Sept. 30, 1941, § 553(d), (c), respectively.

Effective Date of 1954 Amendment. Effective date of amendment of subsec. (a) (3) (A) of this section by Act Mar. 31,

1954, as May 1, 1954, see note preceding section 2450 of this title.

Effective Date of 1951 Amendment. Section 482(f) of Act Oct. 20, 1951 provided that the amendment to subsec. (a) (1) of this section by section 482(c) of such Act should be applicable with respect to articles used in receivers sold to the United States on or after the first day of the first month which begins more than ten days after the enactment of such Act (Oct. 20, 1951); and that the amendment to subsec. (a) (3) (A) of this section (adding clause (vii) to such subsec. (a) (3) (A)), should be applicable with respect to articles resold to the United States on or after such first day.

Section 481(g) of Act Oct. 20, 1951 provided that the amendment of subsec. (a) (3) (A) of this section by section 481(f) of such Act (adding clause (vi) to such subsection (a) (3) (A)), should be effective with respect to articles purchased (by the user thereof) on or after the first day of the first month which begins more than ten days after the date of enactment of such Act (Oct. 20, 1951).

Effective Date of 1950 Amendments. Amendment of subsec. (a) (1) by Act Sept. 23, 1950, § 605(c) (3), as effective only with respect to articles sold on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Amendment of subsec. (a) (3) (A) (ii) by Act Sept. 23, 1950, § 609, was made effective with respect to articles purchased (by the user thereof) on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, by said section 609.

Effective Date of 1944 Amendment. Act Feb. 25, 1944, § 307(a) (6), was made effective by section 307(b) (3) thereof which provided as follows: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(3) The amendment of section 3443(a) (3) (A) (i) of the Internal Revenue Code shall not apply to deny the allowance of a credit or refund, otherwise allowable, with respect to the sale of any article by any person to the United States (A) prior to the date on which sales of such article to the United States become taxable, or (B) pursuant

to a contract entered into prior to such date, or to any agreement or change order supplemental to such contract bearing the same Government contract number."

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Exception of Certain Taxes from 1954 Amendment. Act Mar. 31, 1954, § 507(a) (2), which amended subsec. (a) (3) (A) of this section, excepted from such amendment "any liquid with respect to which tax was paid under section 3412 as in effect prior to the effective date" of such section 507. See 1954 amendment note under section 3412 of this title, and for effective date of such section 507, see note preceding section 2450 of this title.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 578, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the

imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S.Code Cong. and Adm. News, p. 2055. See, also, Acts Oct. 20, 1951, 1951 U.S.Code Cong.Service, p. 1781; Sept. 23, 1950, 1950 U.S.Code Cong.Service, p. 3053; July 3, 1948, 1948 U.S.Code Cong.Service, p. 2337.

§ 3444. Use by manufacturer, producer, or importer

(a) If—

(1) any person manufactures, produces, or imports an article (other than a tire, inner tube, or automobile radio or television receiving set taxable under section 3404) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him which will be taxable under this chapter or sold free of tax by virtue of section 3442, relating to tax-free sales); or

(2) any person manufactures, produces, or imports a tire, inner tube, or automobile radio or television receiving set taxable under section 3404 and sells it on or in connection with, or with the sale of, an article taxable under section 3403(a) or (b), relating to the tax on automobiles, or uses it;

he shall be liable for tax under this chapter in the same manner as if such article was sold by him, and the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner.

(b) This section shall not apply with respect to the use by the manufacturer, producer, or importer of articles described in section 3404(b) if such articles are used by him as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers are to be sold to the United States for its exclusive use. 53 Stat. 418, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 553(d), 55 Stat. 721; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 605(c) (3), 64 Stat. 965; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 482(e), 65 Stat. 534.

Historical Note

1951 Amendment. Subsec. (b) amended by Act Oct. 20, 1951, to exempt, from the tax imposed by this section, articles taxable under section 3404(b) of this title used on the manufacture or production of, or as a component part of, navigation receivers sold to the United States for its exclusive use.

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, which substituted "automobile radio or television receiving set" in lieu of "automobile radio" wherever appearing.

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, to make it applicable to automobile radios.

Effective Date of 1951 Amendment. Section 482(f) of Act Oct. 20, 1951 provided that the amendment by that Act to subsec. (b) of this section should be applicable with respect to articles used in receivers sold to the United States on or after the first day of the first month which begins more than ten days after the date of the enactment of such Act (Oct. 20, 1951).

Effective Date of 1950 Amendment. Amendment of subsec. (a) by Act Sept. 23, 1950, as effective only with respect to articles sold on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, see note set out under section 2412 of this title.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 553 thereof.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., E.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3445. Sales by others than manufacturer, producer, or importer

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax. 53 Stat. 418.

§ 3446. Exemption of articles manufactured or produced by Indians

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska. 53 Stat. 418.

§ 3447. Contracts prior to May 1, 1932

(a) If (1) any person has, prior to May 1, 1932, made a bona fide contract for the sale, after the tax takes effect, of any article in respect of the sale of which a tax is imposed under this chapter, or in respect of which a tax is imposed under this subsection, and (2) such contract does not permit the adding to the amount to be paid under such contract, of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price. If a contract of the character above described was made with the United States, no tax shall be collected under this chapter. If any article has, under a contract of the character above described, been delivered, prior to June 21, 1932, to any person (other than a dealer or other than a person intending to use the article as material in the manufacture or production of another article, or to sell it on or in connection with, or with the sale of, another article), no tax shall be collected under this chapter.

(b) The taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such

taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(c) Repealed. Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 488 (a), 65 Stat. 536.

53 Stat. 418, amended Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 488(a), 65 Stat. 536.

Historical Note

1951 Amendment. Subsec (c) repealed by Act Oct. 20, 1951. Prior to such repeal, said subsec provided:

"(c) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411."

Effective Date of 1951 Amendment. Effective date of repeal of subsec. (c) of this section by Act Oct. 20, 1951, see note under former section 3411 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3448. Return and payment of manufacturers' taxes

(a) Every person liable for any tax imposed by this chapter other than taxes on importation shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. 53 Stat. 419.

§ 3449. Applicability of administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. 53 Stat. 419.

§ 3450. Rules and regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter in so far as it relates to the taxes on articles sold by the manufacturer, producer, or importer. 53 Stat. 419.

§ 3451. Exemption from tax of certain supplies for vessels

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this chapter shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this chapter, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 3430. The term "vessels" as used in

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this section includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions. 53 Stat. 419.

Historical Note

Special Motor Fuels; Exemption from Tax. Tax exemption provided in this section as applicable to tax imposed on

special motor fuels under section 2450(b) of this title, see section 2456 of this title.

§ 3452. Repealed. Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 501, 55 Stat. 706.

Historical Note

Section, Act Feb. 10, 1939, c. 2, § 3452, 53 Stat. 420, was amended by Acts June 29, 1939, 10 p. m., E.S.T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m. E.S.T., c. 419, Title II, § 209, 54 Stat. 522.

Section As Originally Enacted:

"§ 3452. Expiration date

"No sale or importation after June 30, 1939 (or after July 31, 1939, in the case

of articles taxable under section 3403, relating to the tax on automobiles, etc., or section 3400, relating to the tax on tires and inner tubes), shall be taxable under this chapter."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3453. Existing contracts

(a) **Tax Payable by Vendee.** If (1) any person has, prior to the effective date of Part V of Title V of the Revenue Act of 1941, made a bona fide contract for the sale on or after such date, of any article with respect to the sale of which a tax is imposed by that Act or an existing rate of tax is increased by that Act, and (2) such contract does not permit the adding to the amount to be paid under such contract of the whole of such tax or increased rate of tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price.

(b) **Tax Paid to Vendor.** Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected and paid to the United States by the vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner who shall cause collection of such taxes to be made from the vendee. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 553(b), 55 Stat. 720.

Historical Note

References in Text. Effective date of Part V of Title V of the Revenue Act of 1941, referred to in subsec. (a) (1), commenced on Oct. 1, 1941. See "Effective Date" note under this section.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

CHAPTER 30.—TRANSPORTATION AND COMMUNICATION

SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

Sec.

- 3460. Tax.
- 3461. Returns.
- 3462. Publicity of returns.

SUBCHAPTER B.—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES

- 3465. Imposition and rate of tax.
- 3466. Exemption from tax.
- 3467. Returns and payment.
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SUBCHAPTER C.—TRANSPORTATION OF PERSONS

- 3469. Tax on transportation of persons, etc.

SUBCHAPTER D.—ADMINISTRATIVE PROVISIONS

- 3470. Payment of taxes.
- 3471. Refunds and credits.
- 3472. Regulations.
- 3473. Applicability of administrative provisions.
- 3474. Effective date of chapter.

SUBCHAPTER E.—TRANSPORTATION OF PROPERTY

- 3475. Transportation of property.

SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

§ 3460. Tax

(a) Computation and payment. There shall be imposed upon all transportation of crude petroleum and liquid products thereof by pipe line—

(1) A tax equivalent to $4\frac{1}{2}$ per centum of the amount paid for such transportation, to be paid by the person furnishing such transportation.

(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to $4\frac{1}{2}$ per centum of the fair charge for such transportation, to be paid by the person furnishing such transportation.

(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to $4\frac{1}{2}$ per centum of such fair charge, to be paid by the person furnishing such transportation.

(b) Fair charge defined. For the purposes of this section, the fair charge for transportation shall be computed—

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

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(c) **Exempt transportation.** For the purposes of this section, the term "transportation" shall not include any movement through lines of pipe within the premises of a refinery, a bulk plant, a terminal, or a gasoline plant, if such movement is not a continuation of a taxable transportation. The crossing of rights-of-way, streets, highways, railroads, levees, or narrow bodies of water, in connection with such a movement, shall not of itself constitute such movement as being "transportation". 53 Stat. 421, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 502, 521(a) (22), 55 Stat. 706, 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 616, 56 Stat. 978.

Historical Note

1942 Amendment. Subsec. (c) added by Act Oct. 21, 1942.

1941 Amendment. Subsec. (a) amended by Act Sept 20, 1941, §§ 502, 521(a) (22). Former struck out "originating before July 1, 1945" at end of opening par., and latter substituted "4½ per centum" for "4 per centum".

1940 Amendment. Subsec. (a) amended by Act June 25, 1940, which struck out "1941" and inserted in lieu thereof "1945".

1939 Amendment. Subsec. (a) amended by Act June 29, 1939, by substituting "1941" for "1939".

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date of 1941 Amendment. The rates specified in Act Sept 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, c. 63, Title III, § 307, 58 Stat. 66, as amended Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 303, 59 Stat. 576, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3461. Returns

Every person liable for the tax imposed under section 3460 shall make monthly returns under oath in duplicate and pay such taxes to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. 53 Stat. 422.

§ 3462. Publicity of returns

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. 53 Stat. 422.

SUBCHAPTER B.—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES

§ 3465. Imposition and rate of tax

(a) There shall be imposed:

(1) Telephone and telegraph, etc.

(A) On the amount paid within the United States for each telephone or radio telephone message or conversation for which the toll charge is more than 24 cents, a tax equal to 10 per centum of the amount so paid. If a bill is rendered the taxpayer for the services described in this subparagraph, the amount upon which the tax shall be based shall be the sum of all such charges included in the bill, and the tax shall not be based upon the charge for each item, separately, included in the bill.

(B) On the amount paid within the United States for each telegraph, cable, or radio dispatch or message a tax equal to 10 per centum of the amount so paid. If a bill is rendered the taxpayer for the services described in this subparagraph, the amount upon which the tax at each of the rates in this subparagraph shall be based shall be the sum of all such charges at that rate included in the bill, and the tax shall not be based upon the charge for each item, separately, included in the bill. If the tax under subparagraph (A) or (B) is paid by inserting coins in coin-operated telephones, the tax shall be computed to the nearest multiple of 5 cents, except that where the tax is midway between multiples of 5 cents, the next higher multiple shall apply. Only one payment of a tax imposed by subparagraph (A) or (B) shall be required notwithstanding the lines or stations of one or more persons are used in the transmission of such dispatch, message, or conversation.

(2) Leased wires, etc.

(A) A tax equivalent to 10 per centum of the amount paid for leased wire, teletypewriter, or talking circuit special service, but not including an amount paid for leased wire, teletypewriter, or talking circuit special service used exclusively in rendering a service taxable under subparagraph (B).

(B) A tax equivalent to 8 per centum of the amount paid for any wire and equipment service (including stock quotation and information services, burglar alarm or fire alarm service, and all other similar services, but not including service described in subparagraph (A)).

(3) Local telephone service. A tax equivalent to 10 per centum of the amount paid by subscribers for local telephone service and for any other telephone service in respect of which a tax is not payable under paragraph (1) or (2). Amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service. Service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by this paragraph, except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(b) This section shall not apply to the amount paid for so much of the service described in paragraph (2) of subsection (a) as is utilized in the conduct, by a common carrier or telephone or telegraph company or a radio broadcasting station or network, of its business as such. 53 Stat. 422, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 548, 55 Stat. 714; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title

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VI, § 606(a), 56 Stat. 975; Mar. 31, 1954, c. 126, Title IV, § 401(a)-(d), 68 Stat. 41.

Historical Note

1954 Amendments. Subsec. (a) (1) (A) amended by Act Mar. 31, 1954, § 401(a), which substituted "10 per centum" for "20 per centum".

Subsec. (a) (1) (B) amended by Act Mar. 31, 1954, § 401(b), which substituted "10 per centum of the amount so paid" for "15 per centum of the amount so paid, except that in the case of each international telegraph, cable, or radio dispatch or message the rate shall be 10 per centum".

Subsec. (a) (2) (A) amended by Act Mar. 31, 1954, § 401(c), which substituted "10 per centum" for "15 per centum".

Subsec. (a) (2) (B) amended by Act Mar. 31, 1954, § 401(d), which substituted "8 per centum" for "5 per centum".

1942 Amendment. Act Oct. 21, 1942, amended section in its entirety.

1940 Amendment. Act June 25, 1940, struck out "1941" and inserted in lieu thereof "1945".

1939 Amendment. Date "1941" was substituted for "1939" by Act June 29, 1939.

Effective Date of 1954 Amendments. Section 402(a), (b) of Act Mar. 31, 1954, provided:

"(a) In general. Subject to the provisions of subsection (b), the amendments made by section 401 [to this section] shall apply with respect to amounts paid on or after April 1, 1954, for services rendered on or after such date.

"(b) Amounts paid pursuant to bills rendered. The amendments made by section 401 shall not apply with respect to amounts paid pursuant to bills rendered before April 1, 1954. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of sections 1650 and 3465 of the Internal Revenue Code [sections 1650 and 3465 of this title] in effect at the time such services were rendered shall apply to the amounts paid for such services."

Effective Date of 1942 Amendment. Section 606(b) of Act Oct. 21, 1942, provided as follows:

"(1) The amendments to section 3465 (a) (1) made by subsection (a) shall be applicable only with respect to the period beginning with the effective date of this title [Title VI of Revenue Act of 1942].

"(2) The amendments to section 3465 (a) (2) and (3) made by subsection (a) shall apply only to amounts paid pursuant to bills rendered after the effective

date of this title [Title VI of Revenue Act of 1942] for service for which no previous bill was rendered. Where bills rendered after the effective date of this title [Title VI of Revenue Act of 1942] include charges for services previously rendered, the amendments shall not apply to such service as was rendered more than two months before the effective date of this title [Title VI of Revenue Act of 1942], and the provisions of section 3465 in effect at the time such prior service was rendered shall be applicable to the amounts paid for such service."

The effective date of Title VI of Act Oct. 21, 1942, referred to in quoted paragraphs above, was provided for by section 601 of said Act, which read: "This title shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., H. W.T.]"

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof. However, section 550(c) and (d) of that Act provided as follows:

"(c) Despite the provisions of subsection (a), the amendment of section 3465 (a) (2) made by section 548 of this Act (relating to tax on leased-wire, etc., services) shall be applicable only to amounts paid on or after such effective date for services rendered, on or after October 1, 1941, and the provisions of such subsection before its amendment by section 548 shall be applicable with respect to the period before October 1, 1941.

"(d) Despite the provisions of subsection (a), section 3465(a) (3) of the Internal Revenue Code (relating to tax on telephone bills), added to the Internal Revenue Code by section 548 of this Act, shall apply only to the amounts paid in pursuance of bills rendered, after October 5, 1941, for services for which no previous bill was rendered. Such section 3465(a) (3) shall not apply to amounts paid for services otherwise taxable under section 3465(a) (1) which were rendered before October 6, 1941; nor to amounts paid for services otherwise taxable under section 3465(a) (2) which were rendered or paid for before October 6, 1941."

Termination of War Tax Rates. The effective period of the war tax rates provided for in section 1650 of this title, which had temporarily affected the permanent rates specified in subssecs. (a) (1) (A), (a) (2) (A), (a) (2) (B) and (a) (3) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954.

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See such section, and notes thereunder; and for effective date of such amendment to section 1650, in so far as it affects the rates imposed by subsecs. (a) (1) (A), (a) (2) (A), (a) (2) (B) and (a) (3) of this section, see note under section 1651 of this title.

Text of Amending Revenue Acts.
Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Mar. 31, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2055.

§ 3466. Exemption from tax

(a) No tax shall be imposed under section 3465 upon any payment received for services or facilities furnished to any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, or an international organization, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

(b) No tax shall be imposed under section 3465(a) (1) and (2) upon any payment received from any person for services or facilities utilized in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person. Section 3465(a) (3) shall not be construed as imposing a tax on services and facilities described in section 3465(a) (1) or (2) which are exempt from tax under this subsection.

(c) No tax shall be imposed under section 3465(a) (1) (A) upon any payment received for any telephone or radio telephone message which originates within a combat zone, as defined in section 22(b) (13), from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

(d) The right to exemption under this section shall be evidenced in such manner as the Commissioner with the approval of the Secretary may by regulation prescribe. 53 Stat. 422, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 548, 55 Stat. 714; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (7), 58 Stat. 65; Dec. 29, 1945, c. 652, Title I, § 4(f), 59 Stat. 671; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 492(a), 65 Stat. 538.

Historical Note

1951 Amendment. Subsec. (c) added by Act Oct. 20, 1951.

Subsec. (d), formerly subsec. (c), redesignated "(d)" by Act Oct. 20, 1951.

1945 Amendment. Subsec. (a) amended by Act Dec. 29, 1945, which inserted a comma and "or an international organization" following "District of Columbia".

1944 Amendment. Subsec. (a) amended by Act Feb. 25, 1944, which changed "the United States, any State or Territory" to read "any State, Territory of the United States," and added "or any corporation * * * August 22, 1864".

Effective Date of 1951 Amendment. Section 492(b) of Act Oct. 20, 1951 provided that the amendments made by that

Act to this section should apply to amounts paid on or after the first day of the first month which begins more than 10 days after the date of enactment of such Act (Oct. 20, 1951) for telephone or radio telephone messages made on or after such date.

Effective Date of 1944 Amendment. Amendment of subsec. (a) by Act Feb. 25, 1944, § 307(a) (7), was made effective by section 307(b) (4) thereof which provided as follows: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(4) The amendment of section 3466 of the Internal Revenue Code, insofar as it relates to the taxes imposed by section 3465(a) (1) shall be applicable only with respect to messages and

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dispatches originating on or after the first day of the first month which begins three months or more after the date of the enactment of this Act. Insofar as such amendment relates to the taxes imposed under section 3465(a) (2) and (3) of the Internal Revenue Code, it shall be applicable only to amounts paid pursuant to bills rendered on or after the first day of the first month which begins three months or more after the date of the enactment of this Act for service for which no previous bill was rendered.”

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on, and applicable only with respect to the period beginning with, Oct. 1, 1941, by section 550(a) thereof.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, 59 Stat. 576, provided as follows: “Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any

particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States.”

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: “No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States.”

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes “Title 26—Internal Revenue Acts”.

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong Service, p. 1781. See, also, Act Dec. 29, 1945, 1945 U.S. Code Cong. Service, p. 946.

§ 3467. Returns and payment

(a) The taxes imposed by section 3465 shall be paid by the person paying for the services or facilities.

(b) Each person receiving any payments specified in section 3465 shall collect the amount of the tax imposed by such section from the person making such payments, and shall on or before the last day of each month make a return, under oath, for the preceding month, and pay the taxes so collected, to the collector of the district in which his principal place of business is located, or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulation prescribe. The Commissioner may extend the time for making returns and paying the taxes collected, under such rules and regulations as he shall prescribe with the approval of the Secretary, but no such extension shall be for more than 90 days. 53 Stat. 422.

§ 3468. Cross reference

For enforcement of liability for taxes collected, see section 3661. 53 Stat. 423.

SUBCHAPTER C.—TRANSPORTATION OF PERSONS

Subchapter was added by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 554(b), 55 Stat. 721, section 554(a) of which Act redesignated former sub-

chapter C to be “D”. Said Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

§ 3469. Tax on transportation of persons, etc.

(a) **Transportation.** There shall be imposed—

(1) upon the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air within or without the United States, and

(2) upon the amount paid without the United States for the transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States,

a tax equal to 10 per centum of the amount so paid. The tax shall not apply with respect to transportation any part of which is outside the northern portion of the Western Hemisphere, except with respect to any part of such transportation which is from any port or station within the United States, Canada, or Mexico to any other port or station within the United States, Canada, or Mexico. In the case of transportation by water on a vessel which makes one or more intermediate stops at ports within the United States, Canada, or Mexico on a voyage which begins or ends in the United States and ends or begins outside the northern portion of the Western Hemisphere, no part of such transportation shall be considered for the purposes of the preceding sentence to be from any port within the United States, Canada, or Mexico to any other such port if the vessel in stopping at any such intermediate port is not authorized both to discharge and to take on passengers. A port or station within Newfoundland shall not, for the purposes of the preceding two sentences, be considered as a port or station within Canada. For the purposes of this section, the words "northern portion of the Western Hemisphere" mean the area lying west of the thirtieth meridian west of Greenwich, east of the International Date Line, and north of the equator, but not including any country of South America. Such tax shall apply to transportation by motor vehicles having a passenger seating capacity of less than ten adult passengers, including the driver, only when such vehicle is operated on an established line.

(b) **Exemption of Certain Trips.** The tax imposed by subsection (a) shall not apply to amounts paid for transportation which do not exceed 35 cents, to amounts paid for commutation or season tickets for single trips of less than thirty miles, to amounts paid for commutation tickets for one month or less, or to amounts paid for transportation by boat for the purpose of fishing from such boat.

(c) **Seats, Berths, etc.** There shall be imposed upon the amount paid for seating or sleeping accommodations in connection with transportation with respect to which a tax is imposed by subsection (a) a tax equivalent to 10 per centum of the amount so paid.

(d) **Returns and Payment.** The taxes imposed by this section shall be paid by the person making the payment subject to the tax. Each person receiving any payment specified in subsection (a) or (c) shall collect the amount of the tax imposed from the person making such payment; except that, if the payment is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax. Any person required to collect the tax imposed by this section shall, on or before the last day of each month, make a return, under oath, for the preceding month, and pay the taxes so collected to the collector in the district in which his principal place of business is located, or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe.

(e) **Extensions of Time.** The Commissioner may extend the time for making returns and paying the taxes collected, under such rules and regulations as he shall prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(f) Exemptions

(1) **Governmental exemption.** The tax imposed by this section shall not apply to the payment for transportation or facilities fur-

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nished to any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, or an international organization, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

(2) **Exemption of members of military and naval service.** The tax imposed by this section shall not apply to the payment for transportation or facilities furnished under special tariffs providing for fares of not more than 2.025 cents per mile applicable to round-trip tickets sold to personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform of the United States at their own expense when on official leave, furlough, or pass, including authorized cadets and midshipmen, issued on presentation of properly executed certificate. Added Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 554(b), 55 Stat. 721, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 609, 56 Stat. 977; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (3), (9), 58 Stat. 65; Dec. 29, 1945, c. 652, Title I, § 4(g), 59 Stat. 671; Mar. 11, 1947, c. 17, § 8(a), 61 Stat. 12; Mar. 31, 1949, c. 46, § 1, 63 Stat. 30; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title VI, § 607(a), 64 Stat. 965; Dec. 15, 1950, c. 1137, § 1(b), 64 Stat. 1112; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §§ 493(a), 494(a), 65 Stat. 538.

Historical Note

1951 Amendment. Subsec. (a) amended by Act Oct. 20, 1951, § 494(a), to exclude, from the application of the tax, amounts paid in the case of water transportation on a vessel which makes one or more intermediate stops at ports within the United States, Canada, or Mexico on a voyage which begins or ends in the United States and ends or begins outside the northern portion of the Western Hemisphere, if the vessel in stopping at any such intermediate port is not authorized both to discharge and take on passengers.

Subsec. (b) amended by Act Oct. 20, 1951, § 493(a), to exempt, from the tax, amounts paid for transportation by boat for the purpose of fishing from such boat.

1950 Amendments. Subsec. (a) amended by Act Sept. 23, 1950, § 607(a) (1), to make tax on transportation of persons applicable to amounts paid outside the United States for transportation beginning and ending in the United States.

Subsec. (c) amended by Act Sept. 23, 1950, § 607(a) (2), to make tax on seats, berths, etc., applicable to amounts paid outside the United States for transportation beginning and ending in the United States.

Subsec. (d) amended by Act Sept. 23, 1950, § 607(a) (3), to require the person furnishing the initial transportation in the United States pursuant to an order originating outside the United States to collect the tax.

Subsec. (f) (2) amended by Act Dec. 15, 1950, to increase fare exemption from $1\frac{1}{4}$ cents to 2.025 cents per mile, and to make it applicable also to Air Force personnel.

1949 Amendment. Sentence relating to Newfoundland added by Act Mar. 31, 1949.

1947 Amendment. Subsec. (a) of Act Mar. 11, 1947, amended section by inserting second and third sentences.

1945 Amendment. Subsec. (f) (1) amended by Act Dec. 20, 1945, which inserted a comma and "or an international organization" following "District of Columbia".

1944 Amendment. Subsec. (f) (1) amended by Act Feb. 25, 1944, which changed "the United States, or to any State or Territory" to read "any State, Territory of the United States," and added "or any corporation * * * August 22, 1864."

1942 Amendment. Subsecs. (a) and (c) amended by Act Oct. 21, 1942, which inserted "10 per centum" for "5 per centum" and subsec. (f) (2) was amended by same act which inserted "or to members * * * of such nation."

Effective Date of 1951 Amendments. Sections 493(b) and 494(b) of Act Oct. 20, 1951, both provided that the amendments made by subsecs. (a), respectively, of those sections to this section should apply to amounts paid on or after the first day of the first month which begins more than 10 days after the date of enactment of such Act (Oct. 20, 1951) for transportation on or after such first day.

Effective Date of 1950 Amendments. Section 1 of Act Dec. 15, 1950, provided in part that the amendment of subsection (f) (2) should be effective with respect to amounts paid after Dec. 15, 1950.

Section 607(c) of Act Sept. 23, 1950, provided that the amendments of subsecs. (a), (c) and (d) of this section and section 3475(a) of this title should apply to amounts paid on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950 for transportation which begins on or after such first day.

Effective Date of 1949 Amendment. Section 2 of Act Mar. 31, 1949 provided that the amendment of this section was made applicable "to amounts paid for transportation on or after April 1, 1949."

Effective Date of 1947 Amendments. Section 12 of Act Aug. 8, 1947, c. 515, 61 Stat. 919 provided: "Section 3469(f) (2) of the Internal Revenue Code shall not be applicable to amounts paid after December 31, 1947."

Subsec. (b) of section 8 of Act Mar. 11, 1947, provided that the amendment of section by subsec. (a) of said section 8, should apply on amounts paid on or after the first day of the first month which begins more than twenty days after Mar. 11, 1947.

Effective Date of 1944 Amendment. Amendment of sections 3469(f) (1) and 3475(b) by Act Feb. 25, 1944, § 307(a) (8), (a) (9), respectively, cited to text, by section 307(b) (5) thereof which provided as follows: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(5) The amendments of sections 3469(f) (1) and 3475(b) of the Internal Revenue Code shall be applicable only with respect to amounts paid on or after the first day of the first month which begins three months or more after the date of the enactment of this Act, except that the amendment of such section 3475(b), insofar as it relates to the exemption of amounts paid by or to the War Shipping Administration, shall be applicable for the period beginning December 1, 1943, and ending on the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war.'"

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective on the first day of the first month which began more than ten days after Oct. 21, 1942, 4:30 p. m., E.W.T., by section 601 thereof.

Effective Date. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Repeals. Section 12 of Act Aug. 8, 1947, c. 515, 61 Stat. 919, which provided that "Section 3469(f) (2) of the Internal Revenue Code (subsection (f) (2) of this section) shall not be applicable to

amounts paid after December 31, 1947" was repealed by section 1(a) of Act Dec. 15, 1950, with respect to amounts paid after Dec. 15, 1950.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 576, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Termination of War Tax Rates. The effective period of the war tax rates provided for in section 1650 of this title, which had temporarily affected the permanent rates specified in subsecs. (a) and (c) of this section, ended on March 31, 1954 under the provisions of such section 1650 as amended by Act Mar. 31, 1954, c. 126, Title V, § 504(a), 68 Stat. 42. See such section 1650, and notes thereunder; and for effective date of such amendment to section 1650, in so far as it affects the rates imposed by this section, see note under section 1651 of this title.

Special Credit or Refund of Transportation Taxes. For special credit or refund of transportation taxes, see section 506 of Act Mar. 31, 1954, c. 126, Title V, 68 Stat. 45, set out in note under section 1700 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 8:15 p. m., E.D.T., c. 904, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Dec. 15, 1950, see 1950 U.S. Code Cong. Service, p. 4211. See, also, Act Sept. 23, 1950, 1950 U.S. Code Cong. Service, p. 3053.

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SUBCHAPTER D.—ADMINISTRATIVE PROVISIONS

Historical Note

This subchapter, formerly subchapter C, was redesignated "D" by Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 554(a), 55 Stat. 721, which was made effective on Oct. 1, 1941, by section 558 thereof.

§ 3470. Payment of taxes

The taxes imposed by this chapter shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. 53 Stat. 423.

§ 3471. Refunds and credits

(a) Credit or refund of any overpayment of tax imposed by Subchapter B, Subchapter C, or Subchapter E may be allowed to the person who collected the tax and paid it to the United States if such person establishes, to the satisfaction of the Commissioner, under such regulations as the Commissioner with the approval of the Secretary may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtained the consent of such person to the allowance of such credit or refund.

(b) Any person entitled to refund of tax under this chapter paid, or collected and paid, to the United States by him may take credit therefor against taxes due upon any monthly return.

(c) Any person making a refund of any payment on which tax under Subchapter B, Subchapter C, or Subchapter E has been collected, may repay therewith the amount of tax collected on such payment, and the amount of tax so repaid may be credited against the tax under any subsequent return. 53 Stat. 423, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 554(d) (2), 55 Stat. 722; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 620(b), 56 Stat. 980.

Historical Note

1942 Amendment. Subsecs. (a) and (c) amended by Act Oct. 21, 1942, which inserted "or Subchapter E" in each. Section 620(b) of said act purported to amend subsecs. (a) and (b) but subsecs. (a) and (c) were probably intended.

1941 Amendment. Subsecs. (a) and (c) amended by Act Sept. 20, 1941, which inserted "or subchapter C" after "subchapter B" wherever occurring.

Effective Date of 1942 Amendment. Act Oct. 21, 1942, was made effective by section 620(c) thereof as follows: "(c) The amendments made by this sec-

tion [to sections 3471 and 3475] shall take effect on the first day of the first month which begins more than thirty days after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W. T.]."

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3472. Regulations

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 423, amended Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 554(d) (3), 55 Stat. 722.

Historical Note

1911 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Effective Date of 1941 Amendment. Act Sept. 20, 1941, was made effective on Oct. 1, 1941, by section 558 thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3473. Applicability of administrative provisions

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 1700, shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. 53 Stat. 423.

§ 3474. Effective date of chapter

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 423.

SUBCHAPTER E.—TRANSPORTATION OF PROPERTY**Historical Note**

Subchapter added by Act Oct. 21, 1912, 4:30 p. m., E.W.T., c. 619, Title VI, § 620(a), 56 Stat. 979.

§ 3475. Transportation of property

(a) **Tax.** There shall be imposed upon the amount paid within or without the United States for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another, a tax equal to 3 per centum of the amount so paid, except that, in the case of coal, the rate of tax shall be 4 cents per short ton. Such tax shall apply only to amounts paid to a person engaged in the business of transporting property for hire, including amounts paid to a freight forwarder, express company, or similar person, but not including amounts paid by a freight forwarder, express company, or similar person for transportation with respect to which a tax has previously been paid under this section. In the case of property transported from a point without the United States to a point within the United States the tax shall apply to the amount paid within the United States for that part of the transportation which takes place within the United States. The tax on the transportation of coal shall not apply to the transportation of coal with respect to which there has been a previous taxable transportation.

(b) **Exemption of government transportation.** The tax imposed under this section shall not apply to (1) amounts paid for the transportation of property to or from the government of a State, Territory of the United States, or political subdivision thereof, or the District of Columbia, or an international organization, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864, (2) amounts paid to the Post Office Department for the transportation of property, or (3) amounts paid by or to the War Shipping Administration for the transportation of property by water from one point in the United States to another, except between points on the Great Lakes.

(c) **Returns and payment.** The tax imposed by this section shall be paid by the person making the payment subject to the tax. Each person receiving any payment specified in subsection (a) shall collect the amount of the tax imposed from the person making such payment, and shall, on or before the last day of each month, make a return, under oath, for the preceding month, and pay the taxes so collected to the collector in the

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district in which his principal place of business is located, or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe.

(d) **Extensions of time.** The Commissioner may extend the time for making returns and paying the taxes collected, under such rules and regulations as he shall prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(e) **Registration.** Every person engaged in the business of transporting property for hire, including freight forwarders, express companies, and similar persons, shall, on or before the sixtieth day after the effective date of this section, or within sixty days after first engaging in the business of transportation of property for hire, register his name and his place or places of business with the collector in the district in which is located the principal place of business of such person. Every such person who fails to register within the period specified shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$50.

The tax imposed by this section shall not apply to the transportation of earth, rock, or other material excavated within the boundaries of, and in the course of, a construction project and transported to any place within, or adjacent to, the boundaries of such project. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title VI, § 620(a), 56 Stat. 979, amended Nov. 4, 1943, c. 294, § 1, 57 Stat. 585; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title III, § 307(a) (9), 58 Stat. 65; Dec. 29, 1945, c. 652, Title I, § 4 (h), 59 Stat. 671; Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title IV, § 607(b), 64 Stat. 966; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, § 495(a), 65 Stat. 539.

Historical Note

References in Text. The effective date of this section, referred to in subsec. (e), commenced on Feb. 11, 1939 by provision of section 3 of Act Feb. 10, 1939, c. 2, 53 Stat. 1.

1951 Amendment. Last paragraph added by Act Oct. 20, 1951.

1950 Amendment. Subsec. (a) amended by Act Sept. 23, 1950, to make tax on transportation of property applicable to amounts paid for transportation whether payment is made within or without the United States.

1945 Amendment. Subsec. (b) (1) amended by Act Dec. 29, 1945, which inserted a comma and "or an international organization" following "District of Columbia".

1944 Amendment. Subsec. (b) amended generally by Act Feb. 25, 1944.

1943 Amendment. Subsec. (b) amended by Act Nov. 4, 1943, by omitting words "by or to the United States or any agency or instrumentality of the United States" following "to amounts paid" and by adding all following "paid for the transportation of property".

Effective Date of 1951 Amendment. Section 495(b) of Act Oct. 20, 1951 provided that the amendment made by section 495(a) thereof to this section should apply to amounts paid on or after the first day of the first month which be-

gins more than ten days after the date of enactment of such Act (Oct. 20, 1951) for transportation on or after such first day.

Effective Date of 1950 Amendment. Amendment of subsec. (a) by Act Sept. 23, 1950, as applicable to amounts paid on or after the first day of the first month which begins more than 10 days after Sept. 23, 1950, for transportation which begins on or after such first day, see note set out under section 3409 of this title.

Effective Date of 1944 Amendment. Amendment of sections 3409(f) (1) and 3475(b) by Act Feb. 25, 1944, § 307(a) (8), (a) (9), respectively, by section 307(b) (5) thereof which provided as follows: "Despite the provisions of section 301, the amendments made by this section shall apply as follows: '(5) The amendments of sections 3409(f) (1) and 3475(b) of the Internal Revenue Code shall be applicable only with respect to amounts paid on or after the first day of the first month which begins three months or more after the date of the enactment of this Act, except that the amendment of such section 3475(b), insofar as it relates to the exemption of amounts paid by or to the War Shipping Administration, shall be applicable for the period beginning December 1, 1943, and ending on the first day of the first month which begins six months or more after the

date of the termination of hostilities in the present war.'"

Effective Date of 1943 Amendment. Section 2 of Act Nov. 4, 1943, provided as follows: "The amendment made by section 1 shall take effect with respect to amounts paid, on and after the first day of the first month which begins more than ten days after the date of the enactment of this Act, for the transportation of property on and after such first day."

Effective Date. Section 620(c) of Act Oct. 21, 1942, provided as follows: "(c) The amendments made by this section [to sections 3471 and 3475] shall take effect on the first day of the first month which begins more than thirty days after the date of the enactment of this Act [Oct. 21, 1942, 4:30 p. m., H.W.T.]."

Definition. Subsec. (b) (6) of Act Feb. 25, 1944, § 307, provided as follows: "(6) For the purposes of this subsection the term 'date of the termination of hostilities in the present war' means the date proclaimed by the President as the date of such termination, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier."

Determination as to Applicability in Certain Cases. Section 495(a) of Act Oct. 20, 1951, which added the last paragraph to this section, also provided that: "The determination as to the applicability of the tax imposed by section 3475 in the case of the transportation of any excavated material, other than transportation to which the amendment made by this subsection applies, shall be made as if this subsection had not been enacted and without inferences drawn from the fact that the amendment made by this subsection is not expressly applicable to the transportation of such other excavated material."

Termination of the War Shipping Administration. Section 202 of Act July 8, 1946, c. 543, Title II, 60 Stat. 501, terminated the War Shipping Administration as of Sept. 1, 1946, and transferred all functions, powers, duties, etc. to the United States Maritime Commission for the period from Sept. 1, 1946 to Dec. 31,

1946, for the purpose of liquidating the Administration.

Exemptions. Subsec. (c) of Act Feb. 25, 1944, § 307, as amended Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 303, 59 Stat. 576, provided as follows: "Notwithstanding the amendments made by this section, the Secretary of the Treasury may authorize exemption from the taxes imposed by Chapter 19, 29, or 30 of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States."

Termination of Hostilities. The termination of hostilities of World War II, for the purpose of determining the application of subsec. (b) of this section, as amended by Act Feb. 25, 1944, cited to text, was proclaimed at 12 o'clock noon of December 31, 1946, by Proc. No. 2714, 12 F.R. 1, set out as note under 601 of Appendix to Title 50, War and National Defense.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1950—Sept. 23, 1950, 3:15 p. m., F.D.T., c. 994, Title II, § 214, 64 Stat. 937.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053. See, also, Act Sec. 29, 1945, 1945 U.S.Code Cong.Service, p. 946.

CHAPTER 31.—DOCUMENTS AND OTHER INSTRUMENTS

Sec.

3480. Imposition of tax.

3481. Transfer of bonds.

3482. Conveyances.

3483. Administrative provisions.

§ 3480. Imposition of tax

There shall be levied, collected, and paid, for and in respect of the several bonds and other documents, instruments, matters, and things mentioned and described in sections 3481 and 3482, or for or in respect of the

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vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, the several taxes specified in such sections. 53 Stat. 424.

§ 3431. Transfer of bonds

(a) Imposition of tax. On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in section 1801 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That upon any transfer of an interest in a partnership owning such instruments, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such instruments owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: *Provided further*, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon any delivery or transfer to a trustee or public officer, made pursuant to Federal or State law to secure the performance of an obligation, or upon a redelivery or retransfer of such instruments to the transferor, if such delivery, transfer, redelivery, or retransfer is accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

The tax shall not be imposed upon deliveries or transfers made after June 30, 1938, of instruments—

(1) From the owner to a custodian if under a written agreement between the parties the instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian. No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

Any person who, with intent to evade the tax provided in this subdivision, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(b) **Transfers by operation of law.** No delivery or transfer under subsection (a) not otherwise exempt shall be exempt because effected by operation of law. The tax under subsection (a) shall not be imposed upon any delivery or transfer—

(1) From a decedent to his executor or administrator.

(2) From a minor to his guardian, or from a guardian to his ward upon attaining majority.

(3) From an incompetent to his committee or similar legal representative, or from a committee or similar legal representative to a former incompetent upon removal of disability.

(4) From a bank, trust company, financial institution, insurance company, or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or part, under State or Federal law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto.

(5) From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee, or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto.

(6) From a transferee under paragraphs (1) to (5), inclusive, to his successor acting in the same capacity, or from one such successor to another.

(7) From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5(b) of the Trading with the Enemy Act (40 Stat. 415), as amended by the First War Powers Act (55 Stat. 838).

(8) From trustees to surviving, substituted, succeeding, or additional trustees of the same trust.

(9) Upon the death of a joint tenant or tenant by the entireties, to the survivor or survivors.

No exemption shall be granted under this section unless the delivery or transfer is accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

53 Stat. 424, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II,

§ 3481 DOCUMENTS AND OTHER INSTRUMENTS

§ 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 504, 521(a) (23), 55 Stat. 706, 707; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 506(b) (2), (g), 56 Stat. 958, 960; Aug. 8, 1947, c. 518, 61 Stat. 921; May 23, 1952, c. 329, § 1(b), 66 Stat. 93.

Historical Note

References in Text. Section 5(b) of the Trading With the Enemy Act (40 Stat. 415), as amended by the First War Powers Act (55 Stat. 838), referred to in subsec. (b) (7), is classified to section 5 of the Appendix to Title 50, War and National Defense.

1952 Amendment. Subsec. (a) amended by Act May 19, 1952, to exempt from the transfer tax all deliveries or transfers of bonds to a trustee or public officer, made pursuant to a statutory requirement, to secure the performance of an obligation and any redelivery or retransfer of such bonds to the transferor, if such delivery is accompanied by a certificate setting forth the facts.

1947 Amendment. Subsec. (a) amended by Act Aug. 8, 1947, which inserted first proviso.

1942 Amendment. Subsec. (a) amended by Act Oct. 21, 1942, by striking out a proviso which related to transfers in connection with a reorganization as defined in section 112 of Revenue Act of 1932.

Subsec. (b) added by Act Oct. 21, 1942. Former subsec. (b) was repealed by Act Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, § 504, 55 Stat. 706.

1941 Amendment. Subsec. (a) amended by Act Sept. 20, 1941, § 521(a) (23), which substituted "5 cents" for "4 cents" in first par.

Subsec. (b) repealed by Act Sept. 20, 1941, § 504.

1940 Amendment. Subsec. (b) amended by Act June 25, 1940, which struck out

"1941" and inserted in lieu thereof "1945".

1939 Amendment. Subsec. (b) amended by Act June 29, 1939, by substituting "1941" for "1939."

Effective Date of 1952 Amendment. Section 1(c) of Act May 23, 1952, provided that the amendment of this section by Act May 23, 1952, should take effect as of May 24, 1952.

Effective Date of 1942 Amendment. Amendment of subsec. (a) by Act Oct. 21, 1942, was made applicable to deliveries or transfers after Oct. 21, 1942, 4:30 p. m., E. W. T., by section 506(h) (7) of said Act.

Subsec. (b) as added by Act Oct. 21, 1942, was made applicable to deliveries and transfers on or after the thirtieth day after Oct. 21, 1942, by section 506(h) (2) of said Act.

Effective Date of 1941 Amendment. The rates specified in Act Sept. 20, 1941, were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act May 23, 1952, see 1952 U.S. Code Cong. and Adm. News, p. 1489. See, also, Act Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1683.

§ 3482. Conveyances

Deed, instrument, or writing, (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 55 cents; and for each additional \$500 or fractional part thereof, 55 cents. This section shall not apply to any instrument or writing given to secure a debt. 53 Stat. 425, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, § 209, 54 Stat. 522; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, §§ 505, 521(a) (24), 55 Stat. 706, 707.

Historical Note

1941 Amendment. Act Sept. 20, 1941, §§ 505, 521(a) (24), respectively struck out "delivered before July 1, 1945" preceding

parenthesis, and substituted "55 cents" for "50 cents".

1940 Amendment. Act June 25, 1940, struck out "1941" and inserted in lieu thereof "1945".

1939 Amendment. Date "1941" was substituted for "1939" by Act June 29, 1939.

Effective Date of 1941 Amendment. The rates specified in Act Sept 20, 1941,

were made effective on, and applicable only with respect to the period after the date of enactment of that Act, by section 521(b) thereof.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3483. Administrative provisions

Sections 1808 and 1809 of subchapter A of chapter 11 and subchapters B, C, and E of such chapter shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. 53 Stat. 425.

CHAPTER 32.—SUGAR

SUBCHAPTER A.—MANUFACTURE

Sec.

- 3490. Tax.
- 3491. Returns and payment of tax.
- 3492. Persons classed as manufacturers.
- 3493. Exportation.
- 3494. Use as livestock feed or for distillation of alcohol.
- 3495. Addition to tax in case of nonpayment.
- 3496. Other laws applicable.
- 3497. Regulations.
- 3498. Effective date of subchapter.

SUBCHAPTER B.—IMPORTATION

- 3500. Rate of tax.
- 3501. Assessment and payment.

SUBCHAPTER C.—GENERAL PROVISIONS

- 3506. Penalty for officials investing or speculating in sugar.
- 3507. Definitions.
- 3508. Termination of taxes.

SUBCHAPTER A.—MANUFACTURE

§ 3490. Tax

(a) **Rate.** Upon manufactured sugar manufactured in the United States, there shall be levied, collected and paid a tax, to be paid by the manufacturer at the following rates:

(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees, 0.5144 cent per pound of the total sugars therein.

(b) **Exemption.** No tax shall be required to be paid upon the manufacture of manufactured sugar by, or for, the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household. 53 Stat. 426.

§ 3491. Returns and payment of tax

(a) **Returns.** The manufacturer shall file on the last day of each month a return and pay the tax with respect to manufactured sugar, (1) which has been sold, or used in the production of other articles, by the manufacturer during the preceding month (if the tax has not already been paid) and (2) which has not been so sold or used within twelve months ending during the preceding calendar month, after it was manufactured (if the tax has not already been paid).

For the purpose of determining whether sugar has been sold or used within twelve months after it was manufactured sugar shall be considered to have been sold or used in the order in which it was manufactured.

(b) **Payment of tax.** Except as otherwise provided, the taxes imposed by this chapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary. Such taxes shall be paid into the Treasury of the United States.

(c) **Place for filing return and payment of tax.** Any person required, pursuant to the provisions of this section and section 3492, to file a return may be required to file such return with and pay the tax shown to be due thereon to the collector for the district in which the manufacturing was done or the liability incurred. 53 Stat. 426.

§ 3492. Persons classed as manufacturers

Any person who acquires any sugar which is to be manufactured into manufactured sugar but who, without further refining or otherwise improving it in quality, sells such sugar as manufactured sugar or uses such sugar as manufactured sugar in the production of other articles for sale shall be considered for the purposes of sections 3490 and 3491 the manufacturer of manufactured sugar and, as such, liable for the tax under section 3490 with respect thereto. 53 Stat. 427.

§ 3493. Exportation

(a) **Refund of tax paid.** Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 3490 has been paid, the amount of such tax shall be paid by the Commissioner of Internal Revenue to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer: *Provided*, That no such payment shall be allowed with respect to any manufactured sugar, or article, upon which, through substitution or otherwise, a drawback of any tax paid under section 3500 has been or is to be claimed under any provisions of law made applicable by section 3501.

(b) **Period for filing refund claim.** No payment shall be allowed under this section unless within two years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto. 53 Stat. 427, amended Oct. 8, 1940, c. 764, 54 Stat. 1022.

Historical Note

1940 Amendment. Subsec. (a) amended by Act Oct. 8, 1940, to insert "or to the manufacturer of the manufactured sugar or of the articles exported" following "to the shipper".

Subsec. (b) amended by Act Oct. 8, 1940, to increase the filing period from one to two years.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3494. Use as livestock feed or for distillation of alcohol

(a) Refund of tax paid. Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Commissioner to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 3490 with respect thereto.

(b) Period for filing refund claim. No payment shall be allowed under this section unless within one year after the right to such payment has accrued a claim therefor is filed by the person entitled thereto. 53 Stat. 427.

§ 3495. Addition to tax in case of nonpayment

If the tax is not paid when due there shall be added as part of the tax interest at 6 per centum per annum from the date the tax became due until the date of payment. 53 Stat. 427.

§ 3496. Other laws applicable

All provisions of law, including penalties, applicable with respect to the taxes imposed under Subchapter A of chapter 29, shall, insofar as applicable and not inconsistent with the provisions of this chapter, be applicable in respect to the tax imposed by section 3490. 53 Stat. 427.

§ 3497. Regulations

The Commissioner, with the approval of the Secretary, shall prescribe such rules and regulations as may be necessary to carry out all provisions of this chapter, except Subchapter B. 53 Stat. 428.

§ 3498. Effective date of subchapter

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 428.

SUBCHAPTER B.—IMPORTATION**§ 3500. Rate of tax**

In addition to any other tax or duty imposed by law, there shall be imposed, under such regulations as the Commissioner of Customs shall prescribe, with the approval of the Secretary, a tax upon articles imported or brought into the United States as follows:

(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees 0.5144 cent per pound of the total sugars therein;

(3) On all articles composed in chief value of manufactured sugar 0.5144 cent per pound of the total sugars therein. 53 Stat. 428.

§ 3501. Assessment and payment

Such tax shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, 46 Stat. 590, 672 (U.S.C. Title 19, c. 4) and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that for the purposes of sections 336 and 350 of such Act (the so-called flexible-tariff and trade-agreements provisions) such tax shall not be considered a duty or import restriction, and except that no preference with respect to such tax shall be accorded any articles imported or brought into the United States. 53 Stat. 428.

Historical Note

References in Text. Such Act, referred to in the text, has reference to the Tariff Act of 1930, which is classified to chapter 4 of Title 19, Customs Duties.

Sections 336 and 350 of such Act refer to said sections of the Tariff Act of 1930 and are classified to sections 1336 and 1350 of said Title 19.

SUBCHAPTER C.—GENERAL PROVISIONS

§ 3506. Penalty for officials investing or speculating in sugar

No person shall, while acting in any official capacity in the administration of this chapter, invest or speculate in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacturing of sugar or liquid sugar. Any person violating this section shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both. 53 Stat. 428.

§ 3507. Definitions

For the purposes of this chapter—

(a) **Person.** The term “person” means an individual, partnership, corporation, or association.

(b) **Manufactured sugar**

The term “manufactured sugar” means any sugar derived from sugar beets or sugarcane, which is not to be, and which shall not be, further refined or otherwise improved in quality; except sugar in liquid form which contains nonsugar solids (excluding any foreign substance that may have been added or developed in the product) equal to more than 6 per centum of the total soluble solids, and except also sirup of cane juice produced from sugar cane grown in continental United States.

The grades or types of sugar within the meaning of this definition shall include, but shall not be limited to, granulated sugar, lump sugar, cube sugar, powdered sugar, sugar in the form of blocks, cones, or molded shapes, confectioners’ sugar, washed sugar, centrifugal sugar, clarified sugar, turbinado sugar, plantation white sugar, muscavado sugar, refiners’ soft sugar, invert sugar mush, raw sugar, sirups, molasses, and sugar mixtures.

(c) **Total sugars.** The term “total sugars” means the total amount of the sucrose (Clerget) and of the reducing or invert sugars. The total sugars contained in any grade or type of manufactured sugar shall be ascertained in the manner prescribed in paragraphs 758, 759, 762, and 763 of the United States Customs Regulations (1931 edition).

(d) **United States.** The term “United States” shall be deemed to include the States, the Territories of Hawaii and Alaska, the District of Columbia, and Puerto Rico. 53 Stat. 428, amended Aug. 8, 1947, c. 519, Title V, § 501(a), 61 Stat. 934.

Historical Note

1917 Amendment. Subsec. (b) amended by Act Aug. 8, 1947, which redefined “sugar” to conform to the definition in section 1101 of Title 7, Agriculture.

Effective Date of 1947 Amendment. Section 501(c) of Act Aug. 8, 1947, provided: “The amendments to the Internal Revenue Code [sections 3507(b) and 3508 of this title] provided for in this section [section 501(a), (b) of Act Aug. 8, 1947, cited to text] shall become effective upon the first day of the second month

following the date of the enactment of this Act [Aug. 8, 1947].”

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1930 to date, see volumes “Title 26—Internal Revenue Acts”.

Congressional Comment: For legislative history and purpose of Act Aug. 8, 1947, see 1947 U.S. Code Cong. Service, p. 1685.

§ 3508. Termination of taxes

No tax shall be imposed under this chapter on the manufacture, use, or importation of sugar or articles composed in chief value of sugar after June 30, 1957. Notwithstanding the provisions of section 3490 or 3500, no tax shall be imposed under this chapter with respect to unsold sugar held by a manufacturer on June 30, 1957, or with respect to sugar or articles composed in chief value of sugar held in customs custody or control on such date.

With respect to any sugar or articles composed in chief value of sugar upon which tax imposed under section 3500 has been paid and which, on June 30, 1957, are held by the importer and intended for sale or other disposition, there shall be refunded (without interest) to such importer, subject to such regulations as may be prescribed by the Commissioner of Customs with the approval of the Secretary, an amount equal to the tax paid with respect to such sugar or articles composed in chief value of sugar. 53 Stat. 429, amended Oct. 15, 1940, c. 887, § 2, 54 Stat. 1178; Dec. 26, 1941, c. 638, § 5, 55 Stat. 873; June 20, 1944, c. 266, § 2, 58 Stat. 284; July 27, 1946, c. 685, § 2, 60 Stat. 707; Aug. 8, 1947, c. 519, Title V, § 501(b), 61 Stat. 934; Sept. 1, 1951, c. 379, § 6, 65 Stat. 320.

Historical Note

1951 Amendment. Act Sept. 1, 1951, amended section by substituting "June 30, 1957" in lieu of "June 30, 1953" wherever appearing.

1947 Amendment. Act Aug. 8, 1947, amended section by extending the termination date to June 30, 1953, by providing that no tax shall be imposed with respect to unsold sugar held by a manufacturer on June 30, 1953, and by providing that with respect to sugar held by an importer and intended for sale or other disposition on June 30, 1953, shall have the tax refunded.

1946 Amendment. Act July 27, 1946, amended section by extending termination date from June 30, 1947 to June 30, 1948.

1944 Amendment. Act June 20, 1944, amended section by substituting "June 30, 1947" for "June 30, 1945."

1940 Amendment. Date extended from June 30, 1941 to June 30, 1942 by Act Oct. 15, 1940.

Effective Date of 1951 Amendment. Amendment of section as effective Jan. 1, 1953, see note set out under section 1112 of Title 7, Agriculture.

Effective Date of 1947 Amendment. Section 501(c) of Act Aug. 8, 1947, provided: "The amendments to the Internal Revenue Code [sections 3507(b) and 3508 of this title] provided for in this section [section 501(a), (b) of Act Aug. 8, 1947, cited to text] shall become effective upon the first day of the second month following the date of the enactment of this Act [Aug. 8, 1947]."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

Congressional Comment: For legislative history and purpose of Act June 20, 1944, see 1944 U.S.Code Cong.Service, p. 1141.

CHAPTER 33.—BITUMINOUS COAL**Historical Note**

Expiration Bituminous Coal Act of 1937. The Bituminous Coal Act of 1937, sections 828-852 of Title 15, expired on Au-

gust 23, 1943, upon authority of Act May 21, 1943, c. 97, 57 Stat. 82.

§§ 3520-3528. Expired. May 21, 1943, c. 97, 57 Stat. 82, eff. Aug. 24, 1943, 12:01 A. M.

Historical Note

Section 3527 was amended by Acts Apr. 11, 1941, c. 64, § 1(b), 55 Stat. 134; Apr. 23, 1943, c. 68, 57 Stat. 68; May 21, 1943, c. 97, 57 Stat. 82.

Sections as Originally Enacted:

"§ 3520. Tax

"(a) Basic tax

"(1) Rate. There shall be imposed upon the sale or other disposal of bitumi-

nous coal produced within the United States when sold or otherwise disposed of by the producer thereof an excise tax of 1 cent per ton of two thousand pounds.

"The term 'disposal' as used in this section includes consumption or use (whether in the production of coke or fuel, or otherwise) by a producer, and any transfer of title by the producer other than by sale.

"(2) **Exemption.** The tax imposed by paragraph (1) of this subsection shall not apply in the case of a sale of coal for the exclusive use of the United States or of any State or Territory of the United States or the District of Columbia, or any political subdivision of any of them, for use in the performance of governmental functions.

"(b) **Additional Tax**

"(1) **Rate.** In addition to the tax imposed by subsection (a) of this section, there shall be imposed upon the sale or other disposal of bituminous coal produced within the United States, when sold or otherwise disposed of by the producer thereof, which would be subject to the application of the conditions and provisions of the code provided for in section 4 of the Act of April 26, 1937, c. 127, 50 Stat. 76, or of the provisions of section 4-A of such Act, an excise tax in an amount equal to 19½ per centum of the sale price at the mine in the case of coal disposed of by sale at the mine, or in the case of coal disposed of otherwise than by sale at the mine, and coal sold otherwise than through an arms' length transaction, 19½ per centum of the fair market value of such coal at the time of such disposal or sale.

"(2) **Exemption.** In the case of any producer who is a code member as provided in section 4 of the Act of April 26, 1937, c. 127, 50 Stat. 76, and is so certified to the Commissioner of Internal Revenue by the Commission, the sale or disposal by such producer during the continuance of his membership in the code of coal produced by him shall be exempt from the tax imposed by this subsection.

"(3) **Cross reference**

"For revocation of code membership and right to tax exemption, see section 5 of such act of April 26, 1937.

"53 Stat. 430.

"§ 3521. **Payment of tax**

"The taxes imposed by section 3520 shall be paid to the United States by the producer, and shall be payable monthly for each calendar month on or before the first business day of the second succeeding month, under such regulations and in such manner as shall be prescribed by the Commissioner, with the approval of the Secretary. 53 Stat. 431.

"§ 3522. **Resale for governmental use**

"Under regulations prescribed by the Commissioner with the approval of the Secretary, a credit against the tax imposed by subsection (a) of section 3520 or a refund may be allowed or made to any producer of coal in the amount of such tax paid with respect to the sale of coal to any vendee, if the producer has

in his possession such evidence as the regulations may prescribe that such coal was resold by any person for the exclusive use of the United States or of any State, Territory of the United States, or the District of Columbia, or any political subdivision of any of them, for use in the performance of governmental functions. 53 Stat. 431.

"§ 3523. **Market value**

"In the case of coal disposed of otherwise than by sale at the mine, and coal sold otherwise than through an arms' length transaction, the Commissioner shall determine the market value thereof. Such market value shall equal the current market price at the mine of coal of a comparable kind, quality, and size produced for market in the locality where the coal so disposed of is produced. 53 Stat. 431.

"§ 3524. **Other laws applicable**

"All provisions of law, including penalties and refunds, applicable in respect of the taxes imposed by Subchapter A of chapter 29, shall, insofar as applicable and not inconsistent with the provisions of this chapter, be applicable with respect to taxes imposed under this chapter. 53 Stat. 431.

"§ 3525. **Constitutionality**

"No producer shall, by reason of his acceptance of the code provided for in section 4 of the Act of April 26, 1937, c. 127, 50 Stat. 76, or of the exemption from the tax provided in subsection (b) of section 3520, be held to be precluded or estopped from contesting the constitutionality of any provision of this chapter or of the code, or the validity or application of either to him or to any part of the coal produced by him. 53 Stat. 431.

"§ 3526. **Definitions**

"As used in this chapter—

"(a) **Coal.** The term 'coal' means bituminous coal.

"(b) **Bituminous coal.** The term 'bituminous coal' includes all bituminous, semibituminous, and subbituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

"(c) **Producer.** The term 'producer' includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

"(d) **Interstate commerce.** The term 'interstate commerce' means commerce among the several States and Territories, with foreign nations, and with the District of Columbia.

"(e) **United States.** The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. 53 Stat. 431.

"§ 3527. **Termination of tax**

"This chapter shall cease to be in effect, except as provided in section 13 of the Revised Statutes (U.S.C. Title I, § 29), and any agencies and offices estab-

GENERAL ADMINISTRATIVE PROVISIONS

Fished thereunder shall cease to exist on and after April 26, 1941 53 Stat. 432.

"§ 3528. Effective date of chapter

"This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. 53 Stat. 432."

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

CHAPTER 33A.—USE OF MOTOR VEHICLES AND BOATS

§ 3540. Repealed. Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title III, § 301, 59 Stat. 575.

Historical Note

Section, added Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title V, § 557, 55 Stat. 723, related to tax on use of motor vehicles and boats.

Effective Date. Act Nov. 8, 1945, 5:17 p. m., E.S.T., c. 453, Title III, § 301, 59 Stat. 575 provided that repeal of section was effective with respect to the period after June 30, 1946.

SUBTITLE D.—GENERAL ADMINISTRATIVE PROVISIONS

Chap.

Sec.

34.	Information and Returns	3600
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Investigation of Nonessential Federal Expenditures. Act Sept. 20, 1941, 12:15 p. m., E.S.T., c. 412, Title VI, § 601, 55 Stat. 726, provided as follows:

"(a) There is hereby established a committee to investigate Federal expenditures (hereinafter referred to as the 'committee'), to be composed of (1) three members of the Senate Committee on Finance and three members of the Senate Committee on Appropriations, to be appointed by the President of the Senate; (2) three members of the House Committee on Ways and Means and three members of the House Committee on Appropriations, to be appointed by the Speaker of the House of Representatives; and (3) the Secretary of the Treasury, and the Director of the Bureau of the Budget. A vacancy in the committee shall not affect the power of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. A majority of the committee shall constitute a quorum, and the powers conferred upon them by this section may be exercised by a majority vote.

"(b) It shall be the duty of the committee to make a full and complete study and investigation of all expenditures of the Federal Government with a view to recommending the elimination or reduction of all such expenditures deemed by

the committee to be nonessential. The committee shall report to the President and to the Congress the results of its study, together with its recommendations, at the earliest practicable date.

"(c) The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to employ such experts and such clerical and other assistants, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. The provisions of sections 102 to 104, inclusive, of the Revised Statutes [Title 2, U.S.C. §§ 192, 193, 194] shall apply in case of any failure of any witness to comply with any subpoena, or to testify when summoned under the authority of this section.

"(d) The committee is authorized to utilize the services, information, facilities, and personnel of the departments and agencies of the Government.

"(e) There is hereby authorized to be appropriated, the sum of \$10,000, or so much thereof as may be necessary, to carry out the provisions of this section.

"(f) All authority conferred by this section shall terminate upon the submission of the committee's final report."

§ 3600 GENERAL ADMINISTRATIVE PROVISIONS

Appropriations. Additional \$20,000 for this committee was authorized by Act July 9, 1952, c. 598, § 101, 66 Stat. 471.

Similar provisions were contained in the following appropriation acts:

1951—Oct. 11, 1951, c. 485, § 101, 65 Stat. 395.

1950—Sept. 6, 1950, c. 896, c. II, § 101, 64 Stat. 601.

1949—May 24, 1949, c. 133, § 101, 63 Stat. 77.

1947—Mar. 22, 1947, c. 20, Title I, § 101, 61 Stat. 16.

1946—May 18, 1946, c. 263, Title I, § 101, 60 Stat. 184.

1945—July 5, 1945, c. 271, Title I, § 101, 59 Stat. 413.

1944—Dec. 22, 1944, c. 660, Title I, § 101, 58 Stat. 854.

1943—July 12, 1943, 4 p. m., E.W.T., c. 229, Title I, 57 Stat. 538.

1942—Oct. 26, 1942, c. 629, Title II, 56 Stat. 994.

CHAPTER 34.—INFORMATION AND RETURNS

SUBCHAPTER A.—DISCOVERY OF TAX LIABILITY

Sec.

- 3600. Canvass of districts for taxable persons and objects.
- 3601. Entry of premises for examination of taxable objects.
- 3602. Search warrants.
- 3603. Notice requiring records, statements, and special returns.
- 3604. Returns as to formation, etc., of foreign corporations.

SUBCHAPTER B.—DETERMINATION OF TAX LIABILITY

- 3611. Returns executed by taxpayer.
- 3612. Returns executed by Commissioner or collector.
- 3613. Listing by collector of taxable objects owned by nonresidents of collection district.
- 3614. Examination of books and witnesses.
- 3615. Summons from collector to produce books and give testimony.
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SUBCHAPTER C.—MISCELLANEOUS PROVISIONS

- 3630. Classification of and time for taking lists or returns.
- 3631. Restrictions on examination of taxpayers.
- 3632. Authority to administer oaths, take testimony, and certify.
- 3633. Jurisdiction of district courts.
- 3634. Extension of time for filing returns.

SUBCHAPTER A.—DISCOVERY OF TAX LIABILITY

§ 3600. Canvass of districts for taxable persons and objects

Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. 53 Stat. 435.

§ 3601. Entry of premises for examination of taxable objects

(a) Authority

(1) **Entry during day.** Any collector, deputy collector, internal revenue agent, or inspector may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary for the purpose of examining said articles or objects.

(2) **Entry at night.** When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

(b) **Penalty for refusal to permit entry or examination.** Any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit \$500.

(c) **Other penalties.** If any person shall—

(1) **Forcible obstruction or hindrance to officers.** Forcibly obstruct or hinder any collector, deputy collector, internal revenue agent, or inspector, in the execution of any power and authority vested in him by law, or

(2) **Forcible rescue of seized property.** Forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of \$500, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court. 53 Stat. 435.

§ 3602. Search warrants

The several judges of the district courts of the United States, and the United States commissioners, may, within their respective jurisdictions, issue a search warrant, authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

(But see sections 3116 and 3117.)
53 Stat. 436.

§ 3603. Notice requiring records, statements, and special returns

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax. 53 Stat. 436.

§ 3604. Returns as to formation, etc., of foreign corporations

(a) **Requirement.** Under regulations prescribed by the Commissioner with the approval of the Secretary, any attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, file with the Commissioner a return.

(b) **Form and contents of return.** Such return shall be in such form, and shall set forth, under oath, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to file the return, such information as the Commissioner with the approval of the Secretary prescribes by regulations as necessary for carrying out the provisions of the income tax laws. Nothing in this section shall be construed to require the filing by an attorney-at-law of a return with respect to any advice given or information obtained through the relationship of attorney and client.

(c) **Penalty.** Any person required under subsection (a) to file a return, or to supply any information, who willfully fails to file such

return, or supply such information, at the time or times required by law or regulations, shall, in lieu of other penalties provided by law for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. 53 Stat. 436, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 404, 53 Stat. 883.

Historical Note

1939 Amendment. Subsec. (b), last sentence, amended by Act June 29, 1939.

Effective Date of 1939 Amendment. Section 404 of Act June 29, 1939, also provided that the amendment of this section should be effective as of Feb. 10, 1939.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBCHAPTER B.—DETERMINATION OF TAX LIABILITY

§ 3611. Returns executed by taxpayer

When not otherwise provided for—

(a) Preparation

(1) **By taxpayer.** It shall be the duty of any person made liable to any special tax or other tax imposed by law, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner, with the approval of the Secretary, for which such person is liable.

(2) **By collector or deputy collector.** If any person liable to pay any tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any tax shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person.

(b) **Time for filing.** The list or return required under subsection (a) shall be made—

(1) **Special taxes.** In the case of a special tax, on or before the 31st day of July in each year, and

(2) **Other taxes.** In other cases before the day on which the taxes accrue.

(c) **Delinquency.** In case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. 53 Stat. 437.

§ 3612. Returns executed by Commissioner or collector

(a) **Authority of collector.** If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) **Authority of Commissioner.** In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

(1) To make return. Make a return, or

(2) To amend collector's return. Amend any return made by a collector or deputy collector.

(c) **Legal status of returns.** Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

(d) **Additions to tax**

(1) **Failure to file return.** In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) **Fraud.** In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

(3) **Cross reference**

For additions to tax in the case of income tax, see sections 291 and 293, and in the case of a deficiency in gift tax, see section 1019.

(e) **Collection of additions to tax.** The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

(f) **Determination and assessment.** The Commissioner shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. 53 Stat. 437.

§ 3613. Listing by collector of taxable objects owned by nonresidents of collection district

Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes. 53 Stat. 438.

§ 3614. Examination of books and witnesses

(a) To determine liability of the taxpayer. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(b) To determine liability of a transferee. The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons. 53 Stat. 438.

§ 3615. Summons from collector to produce books and give testimony

(a) General authority. It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

(b) Acts creating liability. Such summons may be issued—

(1) Refusal or neglect to comply with notice requiring return. If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) Failure to render return on time. Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) Erroneous, false, or fraudulent return. Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) Refusal to permit examination of books. Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

(c) **Persons liable.** Such summons may be issued to—

(1) **Persons mentioned in subsection (b).** Any person mentioned in subsection (b), or

(2) **Persons having books.** Any other person having possession, custody, or care of books of account containing entries relating to the business of any person mentioned in subsection (b), or

(3) **Other persons.** Any other person the collector may deem proper.

(d) **Service.** Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

(e) **Enforcement.** Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. 53 Stat. 439.

§ 3616. Penalties

Whenever any person—

(a) **False returns.** Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or,

(b) **Neglect to obey summons.** Being duly summoned to appear to testify, or to appear and produce books as required under section 3615, neglects to appear or to produce said books—

he shall be fined not exceeding \$1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

(c) **Cross reference**

For additions to tax in case of fraud or of failure to file returns, see section 3612(d). 53 Stat. 440.

§ 3617. Penalties and awards to informers with respect to illegally produced petroleum

(a) **Failure to file return.** Any person liable for tax on any income from illegally produced petroleum, who willfully fails to make return showing such income within the time prescribed by law shall, in addition to all other penalties prescribed by law, be liable to a civil penalty of \$500 plus \$50 for each day during which such failure continues.

(b) **Reward for information.** Any person not an officer or employee of the United States who furnishes to the Commissioner or any collector

original information leading to the recovery from any other person of any penalty under this section may be awarded and paid by the Commissioner a compensation of one-half the penalty so recovered, as determined by the Commissioner.

(c) **Income defined.** As used in this section, the term "income from illegally produced petroleum" means any income (not shown on a return made within the time prescribed by law) arising out of any sale or purchase of crude petroleum withdrawn from the ground subsequent to January 1, 1932, in violation of any State or Federal law (not including illegal withdrawal the penalties for which have been mitigated or satisfied in pursuance of law prior to May 10, 1934), or arising out of any fee derived from acting as agent for any seller or purchaser in connection with a sale or purchase of such petroleum or products thereof, or any amount illegally received by any person charged with the enforcement of law with respect to such petroleum or products thereof. 53 Stat. 440.

SUBCHAPTER C.—MISCELLANEOUS PROVISIONS

§ 3630. Classification of and time for taking lists or returns

Lists or returns shall, where not otherwise specially provided for, be taken with reference to the day fixed for that purpose by this title; and where taxes accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns. 53 Stat. 440.

§ 3631. Restrictions on examination of taxpayers

No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. 53 Stat. 441.

§ 3632. Authority to administer oaths, take testimony, and certify

(a) Internal revenue personnel

(1) **Persons in charge of administration of internal revenue laws generally.** Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

(2) **Persons in charge of exports and drawbacks.** Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

(b) **Others.** Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations. 53 Stat. 441.

§ 3633. Jurisdiction of district courts

(a) **To enforce summons.** If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or

other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) To issue orders, processes, and judgments

For authority of district courts to issue orders, processes, and judgments for enforcement of internal revenue laws, see section 3709.

53 Stat. 441.

§ 3634. Extension of time for filing returns

If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper. 53 Stat. 441.

CHAPTER 35.—ASSESSMENT

Sec.

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§ 3640. Assessment authority

The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law. 53 Stat. 442.

§ 3641. Certification of assessment lists to collectors

The Commissioner shall certify a list of such assessments when made to the proper collectors, respectively, who shall proceed to collect and account for the taxes and penalties so certified. 53 Stat. 442.

§ 3642. Supplemental assessment lists

(a) **Authorization.** Whenever it is ascertained that any list delivered to any collector is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner may, at any time within the period prescribed for assessment, enter on any monthly or special list:

(1) **Original assessments.** The name of such person so omitted, together with the amount of tax for which he may be liable, and also

(2) **Additional assessments.** The name of any such person in respect to whose return, as aforesaid, there has been any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been assessed upon any return made as aforesaid.

(b) **Certification to collector.** The Commissioner shall certify and return such list to the collector as required by law. 53 Stat. 442.

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§ 3643. Other laws applicable

All provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings authorized and directed under this chapter. 53 Stat. 442.

§ 3644. Establishment by regulation of mode or time of assessment

Whenever the mode or time of assessing any tax which is imposed is not provided for, the Commissioner may establish the same by regulation. 53 Stat. 442.

§ 3645. Periods of limitation upon assessment

For the periods of limitation prescribed for making assessments, see the following: Income tax—Taxpayer, sections 275 and 276; Transferee and fiduciary, section 311. Additional income tax on personal holding companies, section 507.

Excess profits tax, section 603.

Excess profits on Navy contracts, section 651.

Unjust enrichment, section 702(a).

Estate tax—Decedent, sections 874 and 875; Transferee and fiduciary, section 900.

Gift tax—Donor, sections 1016 and 1017; Transferee and fiduciary, section 1025.

Capital stock tax, section 3312.

Transfers to avoid income tax, section 3312.

Employment taxes, sections 1635 and 3312.

Safe deposit boxes, section 3312.

Firearms, section 3312.

Tobacco, snuff, cigars, and cigarettes, sections 2002(b) and 3312.

Documents, other instruments, and playing cards, section 3312.

Admissions, and dues, section 3312.

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Adulterated and process or renovated butter, sections 3311 and 3312.

Filled cheese, sections 3311 and 3312.

Mixed flour, sections 3311 and 3312.

Narcotics, section 3312.

White phosphorus matches, section 3312.

Cotton futures, section 3312.

Pistols and revolvers, section 3312.

Circulation other than of national banks, section 3312.

Liquor—Distilled spirits, section 3312; Wines, section 3312; Fermented liquors, section 3312; Occupational taxes, section 3312.

53 Stat. 443, as amended Aug. 28, 1950, c. 809, Title II, § 207(b) (3), 64 Stat. 540.

Historical Note

1950 Amendment. Act Aug. 28, 1950, amended section by substituting "Employment taxes, sections 1635 and 3312" for "Employment taxes, section 3312".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1930 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 3646. Cross references

For prohibition of suits to restrain assessment of any tax, see section 3653.

For prohibition upon assessment of taxes against insolvent banks, see section 3798. 53 Stat. 443.

§ 3647. Delegation of assessment authority

The Commissioner, under regulations approved by the Secretary, is authorized to delegate to any officer or employee of the Bureau of Internal Revenue, including the field service, any authority, duty, or function which the Commissioner is authorized or required to exercise or perform under section 3640, 3641, or 3642. Added Aug. 27, 1949, c. 517, § 8, 63 Stat. 668.

Historical Note

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S.Code Cong.Service, p. 1876.

CHAPTER 36.—COLLECTION

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SUBCHAPTER A.—GENERAL PROVISIONS

§ 3650. Collection districts

(a) **Establishment and alteration.** For the purpose of assessing, levying, and collecting the taxes provided by the internal revenue laws, the President may establish convenient collection districts, and may from time to time alter said districts.

(b) **Number.** The whole number of collection districts for the collection of internal revenue shall not exceed 65.

(c) **Boundaries**

(1) **Hawaii.** The Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary shall direct.

(2) **Elsewhere.** For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district. 53 Stat. 445.

Historical Note

Delegation of Functions. For delegation to the Secretary of the Treasury of authority vested in the President by this section, see Ex.Ord.No.10239, September

17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

§ 3651. Collection authority**(a) In general**

(1) **Within district.** It shall be the duty of the collectors or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated.

(2) Outside district

For authority of collector or deputy to collect taxes by distraint outside his own collection district, but within the State, see section 3713.

(b) **Transferred assessments.** Whenever a collector has on any list duly returned to him the name of any person not within his collection district who is liable to tax, or of any person so liable who has, in the collection district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him. 53 Stat. 445.

§ 3652. Establishment by regulation of mode or time of collection

Whenever the mode or time of collecting any tax which is imposed is not provided for, the Commissioner may establish the same by regulation. 53 Stat. 446.

§ 3653. Prohibition of suits to restrain assessment or collection

(a) **Tax.** Except as provided in sections 272(a), 871(a) and 1012(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) **Liability of transferee or fiduciary.** No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, (2) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (3) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of any such tax. 53 Stat. 446.

§ 3654. General powers and duties relating to collection

(a) **Collectors.** Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath

before him, and to compel compliance with such summons in the same manner as provided in section 3615.

(b) **Deputy collectors.** Every deputy collector shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such.

(c) **Internal revenue agents.** Every internal revenue agent shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. 53 Stat. 446.

§ 3655. Notice and demand for tax

(a) **Delivery.** Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

(b) **Addition to tax for nonpayment.** If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment; except that in the case of income, estate or gift taxes, such penalties shall not apply and the interest for nonpayment of tax shall be such as is specifically provided by law with respect to such taxes.

(c) **Cross references**

For additions to tax for nonpayment after notice and demand in case of—

Income taxes, see sections 294(b) and 297.

Estate taxes, see section 893.

Gift taxes, see section 1018.

53 Stat. 446.

§ 3656. Payment by check and money orders

(a) **Certified, cashiers', and treasurers' checks and money order**

• (1) **Authority to receive.** It shall be lawful for collectors to receive for internal revenue taxes or in payment of stamps to be used in payment of internal revenue taxes certified, cashiers', and treasurers' checks drawn on National and State banks and trust companies, and United States postal, bank, express, and telegraph money orders, during such time and under such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(2) **Discharge of liability.**

(A) **Check duly paid.** No person who may be indebted to the United States on account of internal revenue taxes or stamps used or to be used in payment of internal revenue taxes who shall have tendered a certified, cashier's, or treasurer's check or money order as provisional payment therefor, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified, cashier's, or treasurer's check or money order so received has been duly paid.

(B) **Check unpaid.** If any such check or money order so received is not duly paid the United States shall, in addition to its right to

exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(b) Other checks

(1) **Authority to receive.** Collectors may receive checks in addition to those specified in subsection (a) in payment of taxes other than those payable by stamp during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) **Ultimate liability.** If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered. 53 Stat. 447, amended Dec. 22, 1944, c. 672, 58 Stat. 912.

Historical Note

1944 Amendment. Act Dec. 22, 1944, amended section generally to permit collectors to accept certified, cashiers', and treasurers' checks, money orders, and other checks, and changed section and subsec. (a) and (b) catchlines.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 28—Internal Revenue Acts".

§ 3657. Payment by United States notes and certificates of indebtedness

Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States in payment of income, war profits, and excess profits taxes, and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 447.

§ 3658. Fractional parts of a cent

In the payment of any tax under this title not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. 53 Stat. 448.

§ 3659. Receipts for taxes

(a) **In general.** Every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

(b) Cross references

For receipts in case of—

Income tax, see section 56(h).

Estate tax, see section 823.

Gift tax, see section 1008(e).

53 Stat. 448.

§ 3660. Jeopardy assessment

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or

not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due. 53 Stat. 448.

§ 3661. Enforcement of liability for taxes collected

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose. 53 Stat. 448.

§ 3662. Prohibition of suits to replevy property taken under internal revenue laws

For statute prohibiting suits to replevy property taken under revenue laws, see section 934 R.S.

53 Stat. 448.

Historical Note

References in Text. Section 934 R.S., referred to in the text, was repealed by Act June 25, 1948, c. 646, § 39, 62 Stat.

992, and is now covered by section 2463 of Title 28, Judiciary and Judicial Procedure.

§ 3663. Cross references

For provisions relating to collection accounts, see subchapter B of chapter 41.

For prohibition upon collection of any tax from insolvent banks, see section 3798. 53 Stat. 448.

SUBCHAPTER B.—LIEN FOR TAXES

§ 3670. Property subject to lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. 53 Stat. 448.

§ 3671. Period of lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. 53 Stat. 449.

§ 3672. Validity against mortgagees, pledgees, purchasers, and judgment creditors

(a) Invalidity of lien without notice. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) Under State or Territorial laws. In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) With clerk of district court. In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) With clerk of District Court of the United States for the District of Columbia. In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) Exception in case of securities. Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of security. As used in this subsection the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) Applicability of subsection. Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose. 53 Stat. 449, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 401, 53 Stat. 882; Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 505, 56 Stat. 957.

Historical Note

References in Text. Section 3186 of the Revised Statutes, referred to in subsec. (b) (1), was repealed by Act Feb. 10, 1939, c. 2, § 4, 53 Stat. 1, and is now covered by sections 3670-3677 of this title.

Date of the enactment of the Revenue Act of 1939, referred to in subsec. (b) (3), was June 29, 1939, 10 p. m., E.S.T.

1942 Amendment. Subsec. (a) (1) amended by Act Oct. 21, 1942, which inserted "In the office in which the filing of such notice is authorized by the law of the State or Territory," for "In ac-

cordance with the law of the State or Territory", and adding "in an office within the State or Territory" following "of such notice".

1939 Amendment. Subsec. (a), formerly entire section consisting of opening par. and subssecs. (a)-(c), was re-enacted as subsec. (a) by Act June 29, 1939. Word "pledgee" was inserted in opening paragraph by said re-enactment.

Subsec. (b) added by Act June 29, 1939. Former subsec. (b) re-enacted as subsec. (a) (2) by said Act.

Former subsec. (c) re-enacted as subsec. (a) (3) by Act June 29, 1939.

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Text of Amendatory Revenue Acts.
Complete original text of Revenue Acts

§ 3673. Release of lien

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) **Liability satisfied or unenforceable.** The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) **Bond accepted.** There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. 53 Stat. 449.

§ 3674. Partial discharge of property

(a) **Property double the amount of the liability.** Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) **Part payment.** Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. 53 Stat. 449.

§ 3675. Effect of certificates of release or partial discharge

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. 53 Stat. 450.

§ 3676. Single bond covering release of lien and payment of income tax deficiency

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272(j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673. 53 Stat. 450.

§ 3677. Extended application of provisions relating to release or partial discharge

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter. 53 Stat. 450.

§ 3678. Civil action to enforce lien on property

(a) **Filing.** In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) **Parties to proceedings.** All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) **Adjudication and decree.** The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

(d) **Receivership.** In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. 53 Stat. 450.

§ 3679. Civil action to clear title to realty

(a) **Obtaining leave to file**

(1) **Request for institution of proceedings by United States.** Any person having a lien upon or any interest in the real estate referred to in section 3678, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided in section 3672, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner to authorize the filing of a civil action as provided in section 3678.

(2) **Petition to court.** If the Commissioner fails to authorize the filing of such civil action within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a civil action for a final determination of all claims to or liens upon the real estate in question.

(3) **Court order.** After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action,

in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties.

(b) **Service on United States.** Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States", c. 359, 24 Stat. 506 (U.S.C., Title 28, §§ 762, 763), as amended.

(c) **Adjudication.** Upon the filing of such civil action the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 3678. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(d) **Costs.** All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. 53 Stat. 450.

Historical Note

References in Text. Sections 5 and 6 of the Act of March 3, 1887, c. 359, 24 Stat. 506, as amended, referred to in subsec. (b), were repealed by Act June 25, 1948, c. 646, § 39, 62 Stat. 992, and are

now covered by sections 507 and 1402 of Title 28, Judiciary and Judicial Procedure, and Rules 4(d), 12(a) and 55(e) of the Federal Rules of Civil Procedure, 28 U.S.C.A.

§ 3680. Cross references

For lien in case of—

Estate tax, see section 827.

Tax on distilled spirits, see section 2800(e).

For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see Act of March 4, 1931, c. 515, 46 Stat. 1528 (U.S.C., Title 28, §§ 901-906).

53 Stat. 451.

Historical Note

References in Text. Act of March 4, 1931, c. 515, 46 Stat. 1528 (U.S.C., Title 28, §§ 901-906), was repealed by Act June 25, 1948, c. 648, § 39, 62 Stat. 992, and is

now covered by sections 1444 and 2410 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER C.—DISTRAINT

PART I.—DISTRAINT ON PERSONAL PROPERTY

§ 3690. Authority to distrain

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. 53 Stat. 451.

§ 3691. Property exempt from distraint

(a) **Enumeration.** There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) **School books and wearing apparel.** The school books and wearing apparel necessary for such family; also

(2) **Arms.** Arms for personal use;

(3) **Livestock.** One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed \$50;

(4) **Fodder.** The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) **Fuel.** Fuel to an amount not greater in value than \$25;

(6) **Provisions.** Provisions to an amount not greater than \$50;

(7) **Household furniture.** Household furniture kept for use to an amount not greater than \$300; and

(8) **Books and tools of trade or profession.** The books, tools, or implements, of a trade or profession, to an amount not greater than \$100.

(b) **Appraisal.** The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt. 53 Stat. 451.

§ 3692. **Levy**

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. 53 Stat. 452.

§ 3693. **Proceedings on distraint**

When distraint is made, as provided in section 3690—

(a) **Account and notice to owner.** The officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale; and

(b) **Public notice.** Forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof.

(c) **Time and place of sale.** The time of sale shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as provided in subsection (b) and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint.

(d) **Adjournment of sale.** Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. 53 Stat. 452.

§ 3694. **Priority of specific tax liability on distrained property**

When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner shall assess the tax thereon. 53 Stat. 452.

§ 3695. Property for account of the United States

(a) **Purchase.** When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States.

(b) **Sale.** The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary.

(c) **Accounting.** The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in section 3971. 53 Stat. 452.

§ 3696. Redemption of property

In any case of distraint for the payment of taxes, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of nonpayment, the said officer shall proceed to sell the said goods, chattels, or effects at public auction. 53 Stat. 453.

§ 3697. Certificates of sale

In all cases of sale, as aforesaid, the certificate of such sale—

(a) **As evidence.** Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(b) **As conveyances.** Shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and

(c) **As authority for transfer of corporate stock.** Where such property consists of stocks, shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the transfer on their books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not; and

(d) **As receipts.** Where the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. 53 Stat. 453.

§ 3698. Cross references

For provisions relating to—

Production of books, see section 3711.

Sale of indivisible property, see section 3712.

Stamps, marks, and brands, see section 3725.

53 Stat. 453.

PART II.—DISTRAINT ON REAL ESTATE

§ 3700. Authority to distrain

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. 53 Stat. 453.

§ 3701. Proceedings on distraint

(a) **Notice to owner.** The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same.

(b) **Public notice.** The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post office nearest to the estate seized, and in two other public places within the county.

(c) **Time and place of sale.** The time of sale shall not be less than twenty nor more than forty days from the time of giving said notice. The place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner.

(d) **Manner of sale.** At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses and charges aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price.

(e) **Purchasers.** If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

(f) **Adjournment of sale.** The said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner. 53 Stat. 453.

§ 3702. Redemption of real estate

(a) **Before sale.** Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

(b) After sale

(1) **Period.** The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof.

(2) **Price.** The land or tract aforesaid shall be permitted to be redeemed upon payment to the purchaser, or in case he can not be found in the county in which the land to be redeemed is situated, then to the collector of the district in which the land is situated, for the use of the purchaser, his heirs, or assigns, the amount paid by the said purchaser and interest thereon at the rate of 20 per centum per annum.

(c) **Record.** When any lands sold are redeemed as provided in this section, the collector shall make entry of the fact upon the record mentioned in section 3706, and the said entry shall be evidence of such redemption. 53 Stat. 454.

§ 3703. Certificates of purchase

(a) Real estate purchased by the United States. In case the real estate sold under section 3701 shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner.

(b) Real estate purchased by others. Upon any sale of real estate, as provided in section 3701, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor. 53 Stat. 454.

§ 3704. Deeds of sale

(a) Real estate purchased by the United States. In case real estate shall be declared under section 3701(e) to be purchased for the United States, the officer shall—

(1) Execution. At the proper time, as provided in subsection (b), execute a deed therefor after its preparation and the endorsement of approval as to its form by the United States attorney for the district in which the property is situate, and

(2) Record and transmission. Without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter transmit such deed to the Commissioner.

(b) Real estate purchased by others. If the said real estate be not redeemed in the manner and within the time provided in section 3702, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution.

(c) Legal effect

(1) As evidence. The deed of sale given in pursuance of this section shall be prima facie evidence of the facts therein stated; and

(2) As conveyance of title. If the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. 53 Stat. 454, amended June 25, 1948, c. 646, § 1, 62 Stat. 909.

Historical Note

Change of Name. Subsec. (a) amended by Act June 25, 1948, eff. Sept. 1, 1948 which substituted	(a) (1) attorney" in lieu of "United States district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.
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§ 3705. Transmission of certificates and deeds to Commissioner

All certificates of purchase, and deeds of property purchased by the United States under the internal revenue laws, on sales for taxes, or under executions issued from United States courts, which may be found in the office of any collector, shall be immediately transmitted by such officer to the Commissioner. 53 Stat. 455.

§ 3706. Records of sale

(a) Requirement. It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by another collector. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof.

(b) **Contents.** The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser, and the date of the deed.

(c) **Certification.** The said record shall be certified by the officer making the sale.

(d) **Copy to Commissioner.** On or before the 5th day of each succeeding month, the collector shall transmit a copy of such record of the preceding month to the Commissioner.

(e) **Delivery by collector to successor.** In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office.

(f) **Copy as evidence.** A copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated. 53 Stat. 455.

§ 3707. Cross references

For provisions relating to—

Levy, see section 3692.

Production of books, see section 3711.

Sale of indivisible property, see section 3712.

Administration of real estate acquired by the United States, see section 3795.

53 Stat. 455.

PART III.—GENERAL PROVISIONS

§ 3710. Surrender of property subject to distraint

(a) **Requirement.** Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) **Penalty for violation.** Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) **Person defined.** The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. 53 Stat. 456.

§ 3711. Production of books

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due. 53 Stat. 456.

§ 3712. Sale of indivisible property

When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance

for the amount of the tax, interest, penalties, and additions thereto, and for the costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States as provided in section 3971. 53 Stat. 456.

§ 3713. Distraint by collector outside his district

Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale under section 3691), or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of subsection (b) of section 3651; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. 53 Stat. 456.

§ 3714. Period of limitation upon distraint

(a) Length of period

For period within which distraint may be begun in case of—

Estate tax, see sections 874(b) (2) and 875.

Income tax, see sections 276(c) and 277.

Miscellaneous taxes, see section 3312(d).

Employment taxes, see sections 1635(d) and 3312(d).

(b) Date of beginning distraint. In determining the running of any period of limitation in respect of distraint, the distraint shall be held to have been begun—

(1) Personal property. In the case of personal property, on the date on which the levy upon such property is made; or

(2) Real property. In the case of real property, on the date on which notice of the time and place of sale is given to the person whose estate it is proposed to sell. 53 Stat. 456, amended Aug. 28, 1950, c. 809, Title II, § 207(b) (4), 64 Stat. 540.

Historical Note

1950 Amendment. Subsec. (a) amended by Act Aug. 28, 1950, which added "Employment taxes, see sections 1635(d) and 3312(d)".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 3715. Successive seizures

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid. 53 Stat. 457.

§ 3716. Fees and charges in distraint and seizure cases

The Commissioner shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary. 53 Stat. 457.

§ 3717. Cross reference

For distraint proceedings against delinquent collectors, see sections 3975 to 3978. 53 Stat. 457.

SUBCHAPTER D.—FORFEITURES

§ 3720. Seizure of forfeitable property

(a) Property subject to seizure and forfeiture

(1) **Manufactured articles.** All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized, and shall be forfeited to the United States.

(2) **Raw materials.** All raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax, may also be seized, and shall be forfeited as aforesaid.

(3) **Equipment.** All tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized, and shall be forfeited as aforesaid.

(b) Authority to make seizures

(1) **Collectors and deputy collectors.** Such property may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner for that purpose.

(2) **Other internal revenue officers.** Any officer of internal revenue may be specially authorized by the Commissioner to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify.

(c) Responsibility

For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see R.S. 970.

53 Stat. 457.

Historical Note

References in Text. R.S. § 970, referred to in subsec. (c), was repealed by Act June 26, 1918, c. 640, § 39, 62 Stat. 992, and is now covered by section 2465 of Title 28, Judiciary and Judicial Procedure.

§ 3721. Custody of seized goods prior to judicial proceedings

Any goods, wares, merchandise, articles, or objects which may be seized, under the provisions of section 3720, by any collector or deputy collector, may, at the option of the collector, be delivered to the marshal of the district, and remain in the care and custody and under the control of said marshal, until he shall obtain possession by process of law. 53 Stat. 457.

§ 3722. Special disposition of perishable goods

When any property which is seized under the provisions of section 3720 is liable to perish or become greatly reduced in price or value by keeping, or when it can not be kept without great expense—

(a) **Application for examination.** The owner thereof, or the marshal of the district, may apply to the collector of the district to examine it; and

(b) **Appraisal.** If, in the opinion of said collector, it shall be necessary that the said property should be sold to prevent such waste or expense, he shall appraise the same; and thereupon

(c) **Return to owner under bond.** The owner shall have said property returned to him upon giving bond in such form as may be prescribed by the Commissioner, and in an amount equal to the appraised value, with such sureties as the collector shall deem good and sufficient, to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the collector, marshal, or otherwise, as he may be ordered and directed by the court, which bond shall be filed by said collector with the United States attorney for the district in which the proceedings in rem authorized in section 3723 may be commenced.

(d) **Sale in absence of bond**

(1) **Order to sell.** If said owner shall neglect or refuse to give said bond, the collector shall issue to a deputy collector or to the marshal aforesaid an order to sell the same.

(2) **Manner of sale.** The deputy collector or marshal shall thereupon advertise and sell the said property at public auction in the same manner as goods may be sold on final execution in said district.

(3) **Disposition of proceeds.** The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court aforesaid, to abide its final order, decree, or judgment. 53 Stat. 458, amended June 25, 1948, c. 646, § 1, 62 Stat. 909.

Historical Note

Change of Name. Subsec. (c) amended by Act June 25, 1948, eff. Sept. 1, 1948 which substituted "United States

attorney" in lieu of "United States district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.

§ 3723. **Judicial proceedings to enforce forfeiture**

(a) **Nature and venue.** The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the district court of the United States for the district where such seizure is made.

(b) **Service of process when property has been returned under bond.** In case bond as provided in section 3722(c) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

(c) **Cost of seizure taxable.** The cost of seizure made before process issues shall be taxable by the court.

(d) **Consolidation**

For consolidation of seizures in one suit, see R.S. 920. 53 Stat. 458.

Historical Note

References in Text. R.S. § 920, referred to in subsec. (d), which related to consolidation of revenue seizures, was

repealed by Act June 25, 1948, c. 646, § 39, 62 Stat. 992.

§ 3724. **Goods valued at \$500 or less**

In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provision of the internal revenue laws which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of \$500 or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

(a) **List and appraisement.** He shall cause a list containing a particular description of the goods, wares, or merchandise seized to be pre-

pared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the United States residing within the collection district wherein the seizure was made. Said list and appraisement shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of \$1.50 a day, to be paid in the manner provided by law for other necessary charges of collectors.

(b) **Notice of seizure.** If the said goods are found by the said appraisers to be of the value of \$500 or less, the said collector or deputy collector shall publish a notice, for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

(c) **Execution of bond by claimant.** Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of \$250, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or deputy collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

(d) **Sale in absence of bond.** If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction.

(e) **Deposit of proceeds of sale.** After deducting the expenses of appraisement and sale, the collector or deputy collector, as the case may be, shall deposit the proceeds to the credit of the Secretary.

(f) **Remission of forfeiture**

(1) **Claim.** Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding subsections, any person claiming to be interested in the property sold, may apply to the Secretary for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale.

(2) **Allowance.** The Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown—

(A) That the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also

(B) That the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property.

(g) **Distribution of proceeds of sale.** If no application for restoration of the proceeds is made within one year, as prescribed in the foregoing subsection, the Secretary shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court. 53 Stat. 458, amended June 25, 1948, c. 646, § 1, 62 Stat. 909.

Historical Note

Change of Name. Subsec. (c) amended by Act June 25, 1948, which substituted "United States attorney" in lieu of "United States district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.

§ 3725. Stamping, marking, and branding seized goods

Where any whisky or tobacco, or other article of manufacture or produce, requiring brands, stamps, or marks of whatever kind to be placed thereon shall be sold upon distraint, forfeiture (except as provided in section 2805 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks, so required. 53 Stat. 460.

§ 3726. Customs laws applicable

The provisions of law applicable to the remission or mitigation by the Secretary of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws. 53 Stat. 460.

§ 3727. Cross references

For provisions relating to—

Destruction of stills and distilling apparatus after judgment of forfeiture, see section 2853.

Release of seized distillery or distilling apparatus before judgment, see section 2852.

Disposal of forfeited distilled spirits and equipment and material for distilling, see section 2807.

53 Stat. 460.

SUBCHAPTER E.—SUITS BY UNITED STATES

§ 3740. Authorization to commence suit

No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced. 53 Stat. 460.

§ 3741. Repealed. May 24, 1949, c. 139, § 142, 63 Stat. 109.

Historical Note

Section, related to continuance, and is now covered by Federal Rules of Civil Procedure, 28 U.S.C.A.

Section Prior to Repeal:

“§ 3741. Continuance

“It shall be lawful for any court in which any suit or criminal proceeding

arising under the internal revenue laws may be pending to continue the same at any stage thereof for good cause shown on motion by the district attorney. 53 Stat. 460.”

§ 3742. Discontinuance or nolle prosequi

For discontinuance or nolle prosequi of prosecutions against distillers for defrauding or attempting to defraud the United States of tax on distilled spirits, see section 2806(f).

53 Stat. 460.

§ 3743. Regulations

It shall be the duty of the Commissioner, with the approval of the Secretary, to establish such regulations, not inconsistent with law, for the observance of revenue officers, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed

necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. 53 Stat. 460.

§ 3744. Repealed. May 24, 1949, c. 139, § 142, 63 Stat. 109.

Historical Note

Section, related to suit for taxes, and is now covered by section 1396 of Title 28, Judiciary and Judicial Procedure.

Section Prior to Repeal:

“§ 3744. Suits for taxes

“Taxes may be sued for and recovered in the name of the United States in any

proper form of action, before any district court of the United States, for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. 53 Stat. 460.”

§ 3745. Suits for fines, penalties, and forfeitures

(a) Collector's report to United States attorney. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the United States attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction.

(b)-(d). Repealed. May 24, 1949, c. 139, § 142, 63 Stat. 109. 53 Stat. 460, amended June 25, 1948, c. 646, § 1, 62 Stat. 909; May 24, 1949, c. 139, § 142, 63 Stat. 109.

Historical Note

1949 Amendment. Subsecs. (b)-(d) repealed by Act May 24, 1949. Subsec. (b) was a cross-reference and section referred to is now incorporated in section 507 of Title 28, Judiciary and Judicial Procedure. Subsec. (c), related to plain-tiffs, proceedings, and venue, and is now covered by section 1395 of Title 28. Subsec. (d), related to costs, and is now covered by section 2412 of Title 28. Prior to such repeal, said subsecs. provided:

“(c) Plaintiff, proceedings, and venue. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction.

“(b) Prosecutions by United States attorney. For the duty of every United States attorney to whom the collector reports the cases in which such fines, penalties, or forfeitures have been incurred in the district of such attorney to cause proper proceedings to be commenced and prosecuted, when authorized or sanctioned by the Commissioner and directed by the Attorney General, see R.S. 838 as amended by Feb. 27, 1877, c. 69, s. 1, 19 Stat. 241 (U.S.C., Title 28, § 486).

“(d) Costs. In case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector, deputy collector, revenue agent, or inspector, the United States shall not be subject to any costs of suit. 53 Stat. 460.”

Change of Name. Act June 25, 1948, eff. Sept. 1, 1948 substituted “United States attorney” in lieu of “district attorney”. See section 501 of Title 28, Judiciary and Judicial Procedure.

§ 3746. Suits for recovery of erroneous refunds

(a) Refunds after limitation period. Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 3774, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Refunds otherwise erroneous. Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such

tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 3774) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund.

(c) **Refunds based on fraud or misrepresentation.** Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(d) **Interest.** Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund. 53 Stat. 461.

§ 3747. Disposition of judgments and moneys recovered

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to collectors as internal revenue taxes are required to be paid. 53 Stat. 461.

§ 3748. Periods of limitation—(a) Criminal prosecutions

No person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be five years for offenses enumerated in section 4047 (e) (relating to unlawful acts of revenue officers or agents) and except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.

(b) **Scope of limitations.** Subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before June 6, 1932.

(c) **Civil suits**

For period of limitation in respect of—

Suits for fines, penalties, and forfeitures, see section 1047 of the Revised Statutes.

Suits for erroneous refunds, see section 3746.

53 Stat. 461, amended Aug. 16, 1954, 9:45 a. m., E. D. T., c. 736, § 201 (a), 68A Stat. 929.

Historical Note

References in Text. Section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096, referred to in subsec. (a), was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, and is now covered by section 371 of Title 18, Crimes and Criminal Procedure.

Section 1047 of the Revised Statutes, referred to in subsec. (c), was repealed by Act June 25, 1948, c. 640, § 39, 62 Stat. 992, and is now covered by section 2462 of Title 28, Judiciary and Judicial Procedure.

1954 Amendment. Subsec. (a) amended by Act Aug. 16, 1954, to insert "except that the * * * or agents) and" following "next after the commission of the offense".

Effective Date of 1954 Amendment. Subsec. 201(b) of Act Aug. 16, 1954, provided that: "The amendment made by this section shall be effective with respect to offenses committed on or before the date of enactment of this Act [Aug. 16, 1954], if on such date prosecution therefor is not barred by provisions of law in effect before such date."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 16, 1954 see 1954 U.S. Code Cong. and Adm. News, p. 5348.

SUBCHAPTER F.—CLOSING AGREEMENTS AND COMPROMISES

§ 3760. Closing agreements

(a) **Authorization.** The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) **Finality.** If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. 53 Stat. 462.

§ 3761. Compromises

(a) **Authorization.** The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) **Record.** Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

(c) Cross reference

For compromises after judgment, see R.S. 3469 (U.S.C., Title 31, § 194).
53 Stat. 462.

Historical Note

National Prohibition Act Functions.
Transfer of functions with respect to National Prohibition Act, see 1947 Reorg. Plan No. 1, § 202, set out in a note un-

der section 133y-16 of Title 5, Executive Departments and Government Officers and Employees.

§ 3762. Penalties

Any person who, in connection with any compromise under section 3761, or offer of such compromise, or in connection with any closing agreement under section 3760, or offer to enter into any such agreement, willfully—

(a) **Concealment of property.** Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(b) **Withholding, falsifying, and destroying records.** Receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax—

Shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both. 53 Stat. 463.

**CHAPTER 37.—ABATEMENTS, CREDITS, AND
REFUNDS**

Sec.

3770. Authority to make abatements, credits, and refunds.

3771. Interest on overpayments.

3772. Suits for refund.

3773. Interest on judgments.

3774. Refunds after periods of limitation.

3775. Credits after periods of limitation.

3776. Repealed.

3777. Reports of refunds and credits in excess of \$200,000.

3778. Cross reference.

3779. Extensions of time for payment of taxes by corporations expecting carry-backs.

3780. Tentative carry-back adjustments.

3781. Extension of time and tentative carry-back and amortization adjustments in the case of consolidated returns.

§ 3770. Authority to make abatements, credits, and refunds

(a) To taxpayers

(1) **Assessments and collections generally.** Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) **Assessments and collections after limitation period.** Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly

applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

(3) **Date of allowance.** Where the Commissioner has signed a schedule of overassessments in respect of any internal revenue tax imposed by this title, the Revenue Act of 1932, or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

(4) **Credit of overpayment of one class of tax against another class of tax due.** Notwithstanding any provision of law to the contrary, the Commissioner may, in his discretion, in lieu of refunding an overpayment of tax imposed by any provision of this title, credit such overpayment against any tax due from the taxpayer under any other provision of this title.

(5) **Delegation of authority to collectors to make refunds.** The Commissioner, with the approval of the Secretary, is authorized to delegate to collectors any authority, duty, or function which the Commissioner is authorized or required to exercise or perform under paragraph (1), (2), (3), or (4) of this subsection, or under section 322 or 1027, where the amount involved (exclusive of interest, penalties, additions to the tax, and additional amounts) does not exceed \$10,000.

(6) **Cross references**

For limitations on refunds and credits in case of—

Income tax, see section 322.

Estate tax, see sections 910, 911, and 912.

Gift tax, see section 1027.

Miscellaneous taxes, see section 3313.

Employment taxes, see sections 1636 and 3313.

(b) **To collectors and officers.** The Commissioner, subject to regulations prescribed by the Secretary, is authorized to repay—

(1) **Collections recovered.** To any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) **Damages and costs.** All damages and costs recovered against any collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty.

(c) **Rule where no tax liability.** An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid. 53 Stat. 464, amended Oct. 8, 1940, 11 p. m., E. S. T., c. 757, Title V, § 508(b), 54 Stat. 1008; June 9, 1943, 7 p. m., E. W. T., c. 120, § 4 (c, d), 57 Stat. 140; Aug. 27, 1949, c. 517, § 9(a), 63 Stat. 669; Aug. 28, 1950, c. 809, Title II, § 207(b) (5), 64 Stat. 540.

Historical Note

1950 Amendment. Subsec. (a) (6) amended by Act Aug. 28, 1950, which added "Employment taxes, see sections 1636 and 3313".

1949 Amendment. Subsec. (a) amended by Act Aug. 27, 1949, which renumbered former pars. (4) and (5) to be (5) and (6) and inserted a new par. (4).

1943 Amendment. Subsec. (a) amended by Act June 9, 1943, which inserted par. (4) and renumbered former par. (4) to be (5).

Subsec. (c) added by Act June 9, 1943.

1940 Amendment. Subsec. (a) (1) amended by Act Oct. 8, 1940, by inserting words "war-profits, excess-profits," therein.

Specific Provisions Relating to Particular Refunds.

Spirits lost in floods of 1936 and 1937. Act Aug. 11, 1939, c. 719, § 1, 53 Stat. 1420, provided for refund or credit of internal revenue taxes paid or rendered unmar-

§ 3770 ABATEMENTS, CREDITS, REFUNDS

ketable by reason of floods of 1936 and 1937 where such spirits were in possession of original taxpayer or rectifier, and limited time for filing claims therefor to thirty days after Aug. 11, 1939.

Act May 29, 1928, § 611; collections stayed in abatement. Act May 29, 1928, c. 852, § 611, 45 Stat. 875, provided as follows: "If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, [subsection (a) (2) of this section], relating to payments made after the expiration of the period of limitation on assessment and collection."

Spirits taxed in excess of \$2.20 per gallon. Act Feb. 11, 1925, c. 208, 43 Stat. 880, authorized refund of taxes paid in excess of \$2.20 per proof gallon on distilled spirits produced and then owned by distiller, and stored on premises of distillery where produced. Act May 8, 1928, c. 509, 45 Stat. 492, authorized, in addition to authority contained in said Act Feb. 11, 1925, refund of taxes paid, whether by owner or any other person, in excess of \$2.20 per proof gallon on any domestic distilled spirits which were then in tax-paid warehouse operated in connection with and contiguous to an internal-revenue bonded warehouse.

Legacies and distributive shares of personalty. Act July 27, 1912, c. 256, 37 Stat. 240, provided for refunding internal taxes on legacies and distributive shares of personal property illegally assessed and collected under Act June 13, 1898, c. 448, § 29, 30 Stat. 464, which was repealed by Act April 12, 1902, c. 500, § 7, 32 Stat. 97, and limited time for presentation of claims therefor to Jan. 1, 1914.

Legacies and export bills of lading. Act June 27, 1902, c. 1160, 32 Stat. 406, contained provisions for refunding taxes paid on legacies and for sums paid for stamps used on export bills of lading, under Act June 13, 1898.

Foreign bills of exchange drawn 1898-1901. Act Feb. 1, 1909, c. 53, 35 Stat. 590, provided for refund of sums paid for stamps used on foreign bills of exchange drawn between July 1, 1898, and June 30, 1901, against the value of products or merchandise exported. Time for presentation of claims under said Act was extended to Dec. 1, 1909, by Act Aug. 5, 1909, c. 7, 36 Stat. 120; to Dec. 1, 1910, by Act June 25, 1910, c. 385, 36 Stat. 779; to Dec. 1, 1911, by Act March 4, 1911, c. 240, 36 Stat. 1291; and to Dec. 1, 1912, by Act Aug. 28, 1912, c. 408, 37 Stat. 626.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S. Code Cong. Service, p. 3287. See, also, Act Aug. 27, 1940, 1949 U.S. Code Cong. Service, p. 1876.

§ 3771. Interest on overpayments

(a) **Rate.** Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

(b) **Period.** Such interest shall be allowed and paid as follows:

(1) **Credits.** In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921, 42 Stat. 227, or any subsequent Revenue Act, then to the date of the assessment of that amount.

(2) **Refunds.** In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) **Additional assessment defined.** As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924, 43 Stat. 253, or by any subsequent Revenue Act.

(d) **Claims based on deduction for bad debts or worthless securities.** If credit or refund of any part of an overpayment would be barred under section 322(b), except for paragraph (5) thereof, or under section 322(d), except for clause (2) thereof, no interest shall be allowed or paid with respect to such part of the overpayment for any period beginning after the expiration of the period of limitation provided in section 322(b)(1) for filing claim for credit or refund of such part of the overpayment and ending at the expiration of six months after the date on which the claim was filed or, in case no claim was filed and the overpayment was found by the Tax Court, ending at the time the petition was filed with the Tax Court.

(e) **Claims based on carry-back of loss or credit.** If the Commissioner determines that any part of an overpayment is attributable to the inclusion in computing the net operating loss deduction for the taxable year of any part of the net operating loss for a succeeding taxable year or to the inclusion in computing the unused excess profits credit adjustment for the taxable year of any part of the unused excess profits credit for a succeeding taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period before the filing of a claim for credit or refund of such part of the overpayment or the filing of a petition with the Tax Court, whichever is earlier; nor for any period beginning with the date of filing of an application under section 3780(a) relating to such part of the overpayment and ending with the last date the Commissioner's determination is required to be made under section 3780(b); nor, in case an application is made under section 3780(a), for any period before the first day of the month immediately following the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit, or before the date on which the return is filed, whichever is later.

(f) **Estimated tax and tax withheld at source.** For date of payment in respect of estimated tax and of tax withheld at source on wages, see section 322(e).

(g) **Claims based upon relief under section 722.** If any part of an overpayment for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment. If any part of an overpayment for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later. 53 Stat. 465, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, §§ 124(c), 153(d), 172(f)(5), Title V, § 504(a), (c), 56 Stat. 821, 848, 893, 957; June 9, 1943, 7 p. m., E. W. T., c. 120, § 4(e), 57 Stat. 141; Dec. 17, 1943, c. 346, § 2(b), 57 Stat. 602; July 31, 1945, c. 340, § 6(b), 59 Stat. 525.

Historical Note

References in Text. Section 722, referred to in the catchline and subsec. (g), relating to general relief under the excess profits tax, was repealed by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 508.

1945 Amendment. Subsec. (e) amended by Act July 31, 1945, which struck out

period following "whichever is earlier" and inserted a semicolon and all text following it.

1943 Amendments. Subsec. (f), formerly subsec. (e) as added by Act Oct. 21, 1942, § 172(f)(5), was relettered (f) and amended by Act June 9, 1943.

Subsec. (g) added by Act Dec. 17, 1943.

1942 Amendment. Subsec. (d) amended by Act Oct. 21, 1942.

Subsec. (e), set out first, added by Act Oct. 21, 1942, § 153(d), and subsec. (e), set out second, was added by Act Oct. 21, 1942 § 172(f) (5).

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of this title and notes thereunder.

Effective Date of 1942 Amendment. Amendment by Act Oct. 21, 1942, § 124 (c), adding subsec. (d) thereto, was made effective with respect to taxable years beginning after Dec. 31, 1938, by section 124(d) thereof.

Amendment by Act Oct. 21, 1942, § 153 (d), adding subsec. (e) set out first therein, was made applicable to taxable

years beginning after Dec. 31, 1940, by section 153(e) thereof.

Amendment by Act Oct. 21, 1942, § 172(f) (5), adding subsec. (e) set out second therein, was made effective Jan. 1, 1943, applicable to all wages (as defined in Part II of Subchapter D) paid on or after such date, by section 172(g) thereof.

Treaty Obligations. Section 109 of Act Oct. 21, 1942, provided as follows: "No amendment made by this title [sections 101-172, 181-186 of 1942 Act] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3772. Suits for refund

(a) Limitations

(1) **Claim.** No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) **Time.** No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

(3) **Reconsideration after mailing of notice.** Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. This paragraph shall not operate (A) to bar a suit or proceeding in respect of a claim reopened prior to June 22, 1936, if such suit or proceeding was not barred under the law in effect prior to that date, or (B) to prevent the suspension of the statute of limitations for filing suit under section 3774(b) (2).

(b) **Protest or duress.** Such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Cross references

For provisions relating to claims for refund or credit filed with the Commissioner in respect of—

Estate tax, see sections 910, 911, and 912.

Gift tax, see section 1027.

Income tax, see section 322.

Miscellaneous taxes, see section 3313.

Employment taxes, see sections 1036 and 3313.

(d) **Suits against collector a bar.** A suit against a collector (or former collector) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrong-

fully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court where the petition to the Tax Court was filed after such date.

(e) **Credit treated as payment.** The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability to the collector in office at the time such credit is allowed. 53 Stat. 465, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, §§ 503, 504(a) (c), 56 Stat. 956, 957; Aug. 27, 1949, c. 517, § 9(b), 63 Stat. 669; Aug. 28, 1950, c. 809, Title II, § 207(b) (6), 64 Stat. 540.

Historical Note

1950 Amendment. Subsec. (c) amended by Act Aug. 28, 1950, which added "Employment taxes, see sections 1636 and 3313".

1949 Amendment. Subsec. (e) added by Act Aug. 27, 1949.

1942 Amendment. Subsec. (d) added by Act Oct. 21, 1942.

Change of Name. Act Oct. 21, 1942, § 504(a), (c), changed the name of the Board of Tax Appeals to The Tax Court

of the United States. See section 1100 of this title and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 3773. Interest on judgments

For interest on judgments, see section 177 of the Judicial Code as amended by Act of May 29, 1928, c. 852, § 615, 45 Stat. 877. 53 Stat. 466.

Historical Note

References in Text. Section 177 of the Judicial Code as amended by Act of May 29, 1928, c. 852, § 615, 45 Stat. 877, referred to in the text, was repealed by

Act June 25, 1948, c. 646, § 39, 62 Stat. 902, and is now covered by section 2516 of Title 28, Judiciary and Judicial Procedure.

§ 3774. Refunds after periods of limitation

A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) shall be considered erroneous—

(a) **Expiration of period for filing claim.** If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) **Disallowance of claim and expiration of period for filing suit.** In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Tax Court or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

(c) Cross reference

For procedure by the United States to recover erroneous refunds, see section 3746. 53 Stat. 466, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957.

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Historical Note

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of this title and notes thereunder.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3775. Credits after periods of limitation

(a) **Period against United States.** Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 3770(a) (2).

(b) **Period against taxpayer.** A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 3774. 53 Stat. 466.

§ 3776. Repealed. Aug. 27, 1949, c. 517, § 10(a), 63 Stat. 669

Historical Note

Section Prior to Repeal:
"§ 3776. Reports to Congress of refunds in excess of \$500
"The Commissioner shall make report to Congress, at the beginning of each

regular session by internal revenue districts and alphabetically arranged, of all disbursements in excess of \$500 under section 3770(a) (1) and (b). 53 Stat. 468."

§ 3777. Reports of refunds and credits in excess of \$200,000

(a) **By Commissioner to Joint Committee.** No refund or credit of any income, war-profits, excess-profits, estate, or gift tax in excess of \$200,000 shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Commissioner is submitted to the Joint Committee on Internal Revenue Taxation.

(b) **By Joint Committee to Congress.** A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

(c) **Tentative Adjustments.** Any credit or refund allowed or made under section 3780(b) or under section 124(k) shall be made without regard to the provisions of subsection (a). In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of \$200,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Commissioner shall determine the correct amount of the tax. 53 Stat. 466, amended July 31, 1945, c. 340, § 4(c), 59 Stat. 523; Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 151, 59 Stat. 574; Aug. 27, 1949, c. 517, § 10(b), 63 Stat. 669.

Historical Note

1949 Amendment. Act Aug. 27, 1949, amended section by raising the report requirement from \$75,000 to \$200,000.

1945 Amendment. Subsec. (c) amended by Act Nov. 8, 1945, § 151, which struck out "Carry-Back" in the heading and inserted "or under section 124(k)" after "section 3780(b)".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S. Code Cong. Service, p. 1876.

§ 3778. Cross reference

For remission of tax against insolvent banks, see section 3798.

53 Stat. 466.

§ 3779. Extensions of time for payment of taxes by corporations expecting carry-backs

(a) **In general.** If a corporation, in any taxable year ending on or after September 30, 1945, files with the collector a statement, as provided in subsection (b), with respect to an expected net operating loss carry-back or unused excess profits credit carry-back from such taxable year, the time for payment of all or part of any tax imposed by chapter 1 or 2 for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) **Contents of statement.** The statement with respect to an expected carry-back referred to in subsection (a) of this section shall be sworn to in the manner prescribed by section 52 in the case of a return and shall be filed at such time and in such manner and form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carry-back, as provided in section 122(b), or an unused excess profits credit carry-back, as provided in section 432(c), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) the estimated amount of the expected net operating loss or unused excess profits credit;

(2) the reasons, facts, and circumstances which cause the corporation to expect such net operating loss or unused excess profits credit;

(3) the amount of the reduction, attributable to the expected carry-back, in the aggregate of the taxes previously determined for all taxable years affected by the carry-back prior to the taxable year of the expected loss or unused credit; such taxes previously determined being ascertained in accordance with the method prescribed in section 3801(d); and such reduction being determined by applying the expected carry-back in the manner provided by law to the items on the basis of which such taxes were determined but such reduction being decreased by the amount of any credits under section 780 properly allocable to such reduction;

(4) the tax or taxes and the amount thereof the time for payment of which is to be extended; and

(5) such other information for the purpose of carrying out the provisions of this section as may be required by such regulations.

The collector, shall upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) **Amount to which extension relates and installment payments.** The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or additions to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the taxes the time for payment of which may be extended shall not exceed the amount stated under clause (3) of subsection (b). For the purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or additions to the tax) shall be considered to be required to be paid prior to the date of filing of

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the statement if the tenth day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of a tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 56(b).

(d) **Period of extension.** The extension of time for payment provided in this section shall expire—

(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss or unused excess profits credit, or

(2) if an application for tentative carry-back adjustment provided in section 3780 with respect to such loss or unused credit is filed before the expiration of the period prescribed in clause (1), on the date on which notice is mailed by registered mail by the Commissioner to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) **Revised statements.** Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed the extension of time shall be terminated as to the difference between the two amounts.

(f) **Termination by Commissioner.** The Commissioner is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Commissioner shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) **Payments on termination.** If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) no further extension of time shall be made under this section with respect to such amount, and

(2) the time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in instalments as provided in section 56(b).

(h) **Jeopardy.** If the Commissioner believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension and notice and demand shall be made by the collector for payment of such amount.

(i) **Interest.** In the case of an amount the time for payment of which has been extended, there shall be collected as part of such amount interest from the dates on which payments would have been required if there had been no extension and the taxpayer had elected to pay the tax in instalments as provided in section 56(b)—

(1) upon so much of such amount as is satisfied under section 3780 (b) by applying or crediting thereto, within the period of extension, a decrease in tax determined in connection with an application under section 3780(a) interest at the rate of 3 per centum per annum to the date of such satisfaction, except that on so much of such satisfied amount as is not in excess of the amount of the deficiencies assessed under section 3780(b) and which is not so satisfied, the rate shall be 6 per centum per annum; and

(2) upon the remainder of the amount the time for payment of which has been extended, interest at the rate of 6 per centum per annum to the date such amount is paid.

If the Commissioner determines that during the period of extension credit or refund of an overpayment has been allowed or made, or a deficiency assessed, affecting the amount to which the extension relates and that the taxpayer could not have taken such overpayment or deficiency into account in the statement or a revised statement, appropriate adjustment shall be made in the interest. Added July 31, 1945, c. 340, § 4(a), 59 Stat. 519, amended Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304(a), 64 Stat. 1220.

Historical Note

1951 Amendment. Subsec. (b) amended by Act Jan. 3, 1951, which substituted "432(c)" for "710(c) (3)".

Subsecs. (c), (g), and (i) amended by Act Jan. 3, 1951, which struck out "four equal" preceding "installments"

Effective Date of 1951 Amendment. Amendment of section by Act Jan. 3, 1951, as applicable with respect to taxable years ending after June 30, 1950,

see note set out under section 114 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Jan. 3, 1951, see 1950 U.S.Code Cong.Service, p. 4027.

§ 3780. Tentative carry-back adjustments

(a) **Application for Adjustment.** A taxpayer may file an application for a tentative carry-back adjustment of the taxes for prior taxable years affected by a net operating loss carry-back, provided in section 122(b), or an unused excess profits credit carry-back, provided in section 432(c), from any taxable year ending on or after September 30, 1945. The application shall be verified in the manner prescribed by section 51 or section 52 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss or unused excess profits credit from which the carry-back results and within a period of twelve months from the end of such taxable year, in the manner and form required by regulations prescribed by the Commissioner with the approval of the Secretary. The application shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) the amount of the net operating loss or unused excess profits credit;

(2) the amount of the tax previously determined for each prior taxable year affected by such carry-back; the tax previously determined being ascertained in accordance with the method prescribed in section 3801(d);

(3) the amount of increase or decrease in each such tax, attributable to such carry-back; such increase or decrease being determined by applying the carry-back in the manner provided by law to the items on the basis of which such taxes were determined. If an application under section 124(j) for tentative adjustment of tax with respect to amortization has been previously filed but such adjustment has not been previously determined, then for the purposes of this section the assessments, applications, credits, and refunds provided for in section 124(k) shall be considered as having previously been made upon the basis of such application under section 124(j);

(4) the amount by which the aggregate of such decreases exceeds the aggregate of such increases;

(5) the unpaid amount of each such tax, not including any amount required to be shown under paragraph (6);

(6) the amount, with respect to each tax for the taxable year immediately preceding the taxable year of such loss or unused credit, as to

which an extension of time for payment under section 3779 is in effect; and

(7) such other information for the purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

(b) **Allowance of Adjustments.** Within a period of ninety days from the date on which an application for a tentative carry-back adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit from which such carry-back results, whichever is the later, the Commissioner shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the increase or decrease in each tax attributable to such carry-back upon the basis of the application and the examination, except that the Commissioner may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such ninety-day period or material omissions. Each such increase shall be deemed determined as a deficiency and shall be assessed, without regard to the restrictions on assessment in section 272. Each such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 3779 is in effect) and any remainder shall be credited—

(1) against the deficiencies (and additions to the tax) assessed under this subsection,

(2) against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss or unused excess profits credit the time for payment of which tax is extended under section 3779, and

any remainder shall, within such ninety-day period, be either credited against any income, war profits, or excess profits tax or instalment thereof then due from the taxpayer, or refunded to the taxpayer. The application, credit or refund of a decrease determined under this subsection shall be deemed a credit or refund of an overpayment within the meaning of sections 781(b) and 3807(b) (1).

(c) **Assessment of Erroneous Allowances.** If the Commissioner determines that the amount applied, credited or refunded under subsection (b) is in excess of the overassessment attributable to the carry-back with respect to which such amount was applied, credited or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of the return, as provided in section 272(f). Upon making such assessment, the Commissioner shall schedule as an overassessment the decrease in any other tax resulting from the adjustments reflected in the computation of the deficiency. Added July 31, 1945, c. 340, § 4(a), 59 Stat. 521, amended Jan. 3, 1951, 10.13 a. m., c. 1199, Title III, § 304(b), 64 Stat. 1220.

Historical Note

References in Text. Section 781(b) referred to in subsec. (b), relating to special rules for application of section 780, dealing with post-war refund of excess profits tax, was repealed by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

1951 Amendment. Subsec. (a) amended by Act Jan. 3, 1951, which substituted "432(c)" for "710(c) (3)".

Effective Date of 1951 Amendment. Amendment of section by Act Jan. 3, 1951, as applicable with respect to taxable years ending after June 30, 1950,

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see note set out under section 114 of this title.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see

volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Jan. 3, 1931, see 1950 U.S.Code Cong.Service, p. 4027.

§ 3781. Extension of time and tentative carry-back and amortization adjustments in the case of consolidated returns

If the corporation seeking an extension of time under section 3779, a tentative carry-back adjustment under section 3780, or a tentative adjustment with respect to an amortization deduction under section 124(j) and (k), made or was required to make a consolidated return, either for the taxable year within which the net operating loss or the unused excess profits credit arises or within which the election is made to terminate the amortization period, or for a preceding taxable year affected by such loss, credit, or election, the provisions of such sections shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Added July 31, 1945, c. 340, § 4(a), 59 Stat. 523.

CHAPTER 38.—MISCELLANEOUS PROVISIONS

Sec.

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MISCELLANEOUS PROVISIONS

§ 3790. Prohibition of administrative review of Commissioner's decisions

In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal revenue laws shall not, except as provided in chapter 5, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. In the absence of fraud or mistake in mathematical calculation, the allowance or nonallowance by the Commissioner, of interest on any credit or refund under the internal revenue laws shall not, except as provided in Chapter 5, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. 53 Stat. 467, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 4(f), 57 Stat. 141.

Historical Note

1943 Amendment. Act June 9, 1943, added sentence at end beginning "In the absence", etc.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3791. Rules and regulations

(a) Authorization

(1) **In general.** Except as provided in section 1928(a), Cotton Futures, section 2599, Marihuana, section 2559, Narcotics, section 3176, Liquor, and section 1805, Silver, the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) **In case of change in law.** The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) **Retroactivity of regulations or rulings.** The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect. 53 Stat. 467.

Historical Note

Provisions of Internal Revenue Code of 1954. Ex. Ord. No. 10574, Nov. 8, 1954, 19 F.R. 7249, set out as a note under section 55 of this title, provided that "Any reference in any regulation or other Executive document issued or approved by the President to any provision

of the Internal Revenue Code of 1939 shall, except as may be inconsistent with the Internal Revenue Code of 1954 or otherwise inappropriate, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1954."

§ 3792. Expenses of detection and punishment of frauds

The Commissioner, under regulations prescribed by him with the approval of the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law. 53 Stat. 467, amended Aug. 27, 1949, c. 517, § 12, 63 Stat. 669.

Historical Note

1949 Amendment. Act Aug. 27, 1949, amended section by inserting "under regulations prescribed by him" following "The Commissioner".

amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S.Code Cong.Service, p. 1876.

§ 3793. Penalties and forfeitures

(a) Fraudulent bonds, permits, and entries

(1) penalty. Every person who—

(A) Simulation or execution. Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or

(B) Procuring execution. Procures the same to be falsely or fraudulently executed, or

(C) Aiding in execution. Advises, aids in, or connives at such execution thereof—

shall be imprisoned for a term not less than one year nor more than five years, and

(2) Forfeiture. The property to which such false or fraudulent instrument relates shall be forfeited.

(b) Fraudulent returns, affidavits, and claims

(1) Assistance in preparation or presentation. Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) Person defined. The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(c) Cross references

(1) Penalties

For other penalties under this subtitle, see the following sections:

- Refusal to permit entry or examination, 3001(b);
- Forcibly obstructing officers, 3001(c);
- Forcibly rescuing property, 3601(c);
- Failure to file return, 3612(d) (1);
- False or fraudulent return, 3612(d) (2);
- Nonpayment of tax, 3655(b);
- Failure to surrender property subject to distraint, 3710(b);
- Fraud in connection with closing agreements and compromises, 3763.

(2) Forfeitures

For other forfeitures under this subtitle, see the following:

- Sales or removals in fraud of internal revenue laws, section 3720(a);
- Sales or removals with design to avoid payment of taxes, section 3720(a).

53 Stat. 468.

§ 3794. Interest on delinquent taxes

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after August 30, 1935, upon any internal-revenue tax (including amounts assessed or collected as a part thereof) not paid when due, shall be at the rate of 6 per centum per annum. 53 Stat. 468.

Historical Note

<p>Interest Accruing after Oct. 24, 1933. Act May 28, 1938, c. 289, § 821, 52 Stat. 583 provided for computation of interest at 6 per centum on delinquent income,</p>	<p>estate, and gift taxes accruing after Oct. 24, 1933, and prior to Aug. 30, 1935, and for refund of excess.</p>
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§ 3795. Administration of real estate acquired by the United States

(a) **Person charged with.** The Commissioner shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them.

(b) **Sale.** The Commissioner, with the approval of the Secretary, may, at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States as aforesaid.

(c) **Lease.** Until such sale the Commissioner, with the approval of the Secretary, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

(d) **Release to debtor.** In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner, with the approval of the Secretary, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives. 53 Stat. 468.

§ 3796. Repealed. Oct. 31, 1951, c. 654, § 1(52), 65 Stat. 703

Historical Note

Section Prior to Repeal:
"§ 3796. Purchase of stationery
"The purchase of stationery for the internal revenue service shall be made un-

der the direction of the Secretary as in the case of other branches of the public service under the Treasury Department. 53 Stat. 469."

§ 3797. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) **Person.** The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

(2) **Partnership and partner.** The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization. A person shall be recognized as a partner for income tax purposes if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(3) **Corporation.** The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) **Domestic.** The term "domestic" when applied to a corporation or a partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) **Foreign.** The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) **Fiduciary.** The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) **Stock.** The term "stock" includes the share in an association, joint-stock company, or insurance company.

(8) **Shareholder.** The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) **United States.** The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(10) **State.** The word "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) **Secretary.** The term "Secretary" means the Secretary of the Treasury.

(12) **Commissioner.** The term "Commissioner" means the Commissioner of Internal Revenue.

(13) **Collector.** The term "collector" means collector of internal revenue.

(14) **Taxpayer.** The term "taxpayer" means any person subject to a tax imposed by this title.

(15) **Military or naval forces of the United States.** The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Women's Army Auxiliary Corps, the Navy Nurse Corps, Female, and the Women's Reserve branch of the Naval Reserve.

(16) **Withholding agent.** The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

(17) **Husband and wife.** As used in sections 22(k), 23(u), 171, and the last sentence of section 25(b) (3), if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband".

(18) **International organization.** The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act.

(19) **Domestic building and loan association.** The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.

(20) **Employee.** For the purpose of applying the provisions of chapter 1 with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan or by a trust forming part of such a plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of subchapter A of chapter 9, or, in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(b) **Includes and including.** The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Cross references

For other definitions, see the following:

- Singular as including plural, R.S. 1.
- Plural as including singular, R.S. 1.
- Masculine as including feminine, R.S. 1.
- Officer, R.S. 1.
- Oath as including affirmation, R.S. 1.
- Company or association as including successors and assigns, R.S. 5.
- County as including parish, R.S. 2.
- Vessel as including all means of water transportation, R.S. 3.
- Vehicle as including all means of land transportation, R.S. 4.

53 Stat. 469, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title I, § 120(f), Title V, § 511, 56 Stat. 970; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 10(i), 58 Stat. 240; Dec. 29, 1945, c. 652, Title I, § 4(i), 59 Stat. 671; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title III, §§ 313(i), 340(a), 343(a), 65 Stat. 491, 511, 516.

Historical Note

References in Text. Army Nurse Corps, Female, referred to in subsec. (a) (15), which was established by Act July 9, 1918, c. 143, subchapter V, 40 Stat. 879, was superseded by Army Nurse Corps, Regular Army, created by Act Apr. 16, 1947, c. 38, Title I, 61 Stat. 41, as amended. See section 166 of Title 10, Army and Air Force, establishing the Army Nurse Corps, Regular Army.

Women's Army Auxiliary Corps, referred to in subsec. (a) (15), which was established by Act May 14, 1942, c. 312, 56 Stat. 273, was superseded by Women's Army Corps, created by Act July 1, 1943, c. 187, 57 Stat. 371, and abolished by Act June 25, 1947, c. 327, § 2(a), 61 Stat. 451, eff. July 1, 1948. Said effective date was extended until June 12, 1949 by Act June 12, 1948, c. 449, Title I, § 110, 62 Stat. 363, section 101 of which established, eff. June 12, 1948, the Women's Army Corps, Regular Army. See section 316 of Title 10, Army and Air Force, establishing the Women's Army Corps, Regular Army.

Navy Nurse Corps, Female, referred to in subsec. (a) (15), which was established by Act May 13, 1908, c. 166, 35 Stat. 146, was superseded by Navy Nurse Corps, created by Act Apr. 16, 1947, c. 38, Title II, § 201, 61 Stat. 47, as amended. See section 43 of Title 34, Navy, establishing the Navy Nurse Corps.

Women's Reserve branch of the Naval Reserve, referred to in subsec. (a) (15), which was established by Act June 25, 1938, c. 690, Title V, as added July 30, 1942, c. 538, 56 Stat. 730, was superseded by Act July 9, 1952, c. 608, part VIII, § 803, 66 Stat. 505, and is now covered by sections 217(b) and 414 of said Act July 9, 1952. See sections 941(b) and 1053 of Title 50, War and National Defense, relating to appointments and enlistment of women in the Naval Reserve and making certain laws also applicable to the women in the Naval Reserve.

International Organizations Immunities Act, referred to in subsec. (a) (18), is classified to sections 288-288f of Title 22, Foreign Relations and Intercourse, and sections 116, 1426, 1607, 1621, 3469, 3469 and 3475 of this title and this section.

R.S. §§ 1-5, referred to in subsec. (c), were repealed by Act July 30, 1947, c. 388, § 2, 61 Stat. 640, and are now covered by sections 1-5 of Title 1, General Provisions.

1951 Amendment. Subsec. (a) (2) amended by Act Oct. 20, 1951, § 340(a), to add last sentence.

Subsec. (a) (19) added by Act Oct. 20, 1951, § 313(i).

Subsec. (a) (20) added by Act Oct. 20, 1951, § 343(a).

1945 Amendment. Subsec. (a) amended by Act Dec. 29, 1945, which added par. (18).

1944 Amendment. Subsec. (a) (17) amended by Act May 29, 1944, which struck out "25(b) (2) (A), and 171, and the last sentence of section 401(a) (2)" and inserted in lieu thereof "171, and the last sentence of section 25(b) (3)".

1942 Amendment. Subsec. (a), par. (15) amended and par. (17) added by Act Oct. 21, 1942.

Effective Date of 1951 Amendment. Amendment of subsec. (a) (2) made applicable with respect to taxable years beginning after Dec. 31, 1950, by section 340(c) of Act Oct. 20, 1951. See, also, note set out under section 191 of this title.

Addition of subsec. (a) (19) made applicable only with respect to taxable years beginning after Dec. 31, 1951, by section 313(y) of Act Oct. 20, 1951.

Addition of subsec. (a) (20) made applicable with respect to taxable years beginning after Dec. 31, 1953, by section 343(b) of Act Oct. 20, 1951.

Effective Date of 1942 Amendment. Amendment of subsec. (a) (17) by Act May 29, 1944, was made applicable to taxable years beginning after Dec. 31, 1943, by section 2 thereof.

Effective Date of 1942 Amendment. Amendment of subsec. (a), inserting new par. (17), by Act Oct. 21, 1942, was made effective by section 120(g) thereof as follows: "(g) The amendments made by this section [to sections 22(b) (2), 23(u),

25(b) (2) (A), 171 and 3797(a) (17)] shall be applicable only with respect to taxable years beginning after December 31, 1941; except that if the first taxable year beginning after December 31, 1941, of the husband does not begin on the same day as the first taxable year beginning after December 31, 1941, of the wife, such amendments shall first become applicable in the case of the husband on the first day of the wife's first taxable year beginning after December 31, 1941, regardless of the taxable year of the husband in which such day falls."

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1950] shall apply in any case where its

application would be contrary to any treaty obligation of the United States."

Similar provisions were contained in the following Act:

1942—Oct. 21, 1942, 4:30 p. m., E.W.T., c. 619, Title I, § 109, 56 Stat. 808.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S. Code Cong. Service, p. 1781. See, also, Acts Dec. 29, 1945, 1945 U.S. Code Cong. Service, p. 946; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 3798. Exemption of insolvent banks from tax

(a) Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof.

(c) (1) Any such tax collected, whether collected before, on, or after the date of enactment of the Revenue Act of 1938, shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a) of this section, or any such tax which has been abated or remitted after May 28, 1938, shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b) of this section or any such tax which has been refunded after May 28, 1938, shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended, during, and for ninety days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection, and collected, during the time within which, had there been no abatement, collection might have been made.

(d) This section shall not apply to any tax imposed by subchapter A or subchapter C of chapter 9. 53 Stat. 470, amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title IV, § 406, 53 Stat. 884.

Historical Note

References in Text. Date of enactment of Revenue Act of 1938, referred to in subsec. (c) (1), was May 28, 1938.

1939 Amendment. Term "agent" as used in subsec. (b) was made to include a corporation as a liquidating agent by Act June 29, 1939, § 406(b).

Subsec. (c) amended by Act June 29, 1939, § 406(a).

Effective Date of 1939 Amendments. Section 406(c) of Act June 29, 1939 pro-

vided that the amendments of this section should be effective as of date of enactment of Revenue Act of 1938 (May 28, 1938).

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3799. Income from obligations and mortgages issued by by¹ joint-stock land banks

Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, 39 Stat. 380 (U.S.C., Title 12, § 931-3), as amended, in the case of mortgages made or obligations issued by any joint-stock land bank after May 28, 1938, all income, except interest, derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation. 53 Stat. 471.

¹ So in original. Second "by" probably should be omitted.

§ 3800. Jurisdiction of district courts to issue orders, processes, and judgments

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws. 53 Stat. 471.

§ 3801. Mitigation of effect of limitation and other provisions in income tax cases

(a) **Definitions.** For the purpose of this section—

(1) **Determination.** The term "determination under the income tax laws" means—

(A) A closing agreement made under section 3760;

(B) A decision by the Tax Court of the United States or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; or

(C) A final disposition by the Commissioner of a claim for refund. For the purposes of this section a claim for refund shall be deemed finally disposed of by the Commissioner—

(i) as to items with respect to which the claim was allowed, upon the date of allowance of refund or credit or upon the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(ii) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Commissioner in reduction of the refund or credit, upon expiration of the time for instituting suit with respect thereto (unless suit is instituted prior to the expiration of such time).

Such term shall not include any such agreement made, or decision, judgment, decree, or order which became final, or claim for refund finally disposed of, prior to August 27, 1938.

(2) **Taxpayer.** Notwithstanding the provisions of section 3797 the term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

(3) **Related taxpayer.** The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b) (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

(b) **Circumstances of adjustment.** When a determination under the income tax laws—

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Requires the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the additional deductions allowable in computing the net income of estates or trusts, or requires or denies any of the inclusions in the computation of net income of beneficiaries, heirs, or legatees, specified in section 162(b) and (c) of chapter 1, and corresponding sections of prior revenue Acts, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition or gain or loss to, the taxpayer or any person who acquired title to such property in such transaction and from whom mediately or immediately the taxpayer derived title subsequent to such transaction; or

and, on the date the determination becomes final, correction of the effect of the error is prevented by the operation (whether before, on, or after

May 28, 1938) of any provision of the internal-revenue laws other than this section and other than section 3761 (relating to compromises), then the effect of the error shall be corrected by an adjustment made under this section. Except in cases described in paragraphs (6) and (7), such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the amount of the adjustment would be refunded or credited in the same manner as an overpayment under subsection (c)) or by the taxpayer with respect to whom the determination is made (in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under subsection (c)), which position is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or non-recognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to The Tax Court of the United States for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(6) Disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer; but this paragraph shall apply only if (A) the determination became final on or after June 1, 1952, and (B) credit or refund of the overpayment attributable to the deduction or credit which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or the Tax Court of the United States, in writing, that he was entitled to such deduction or credit in the taxable year for which it is so disallowed; or

(7) Requires the exclusion from gross income of an item which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; but this paragraph shall apply only if (A) the determination became final on or after June 1, 1952, and (B) assessment of deficiency under section 272(a) by the Secretary for such other taxable year or against such related taxpayer was not barred, by any law or rule of law, at the time the Secretary first maintained in a notice of deficiency sent pursuant to section 272(a) or before the Tax Court of the United States, that such item should be included in the gross income of the taxpayer for the taxable year to which the determination relates—.

(c) **Method of adjustment.** The adjustment authorized in subsection (b) shall be made by assessing and collecting, or refunding or crediting, the amount thereof, to be ascertained as provided in subsection (d), in the same manner as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year with respect to which the error was made, and as if on the date of the determination specified in subsection (b) one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year.

(d) **Ascertainment of amount of adjustment.** In computing the amount of an adjustment under this section there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return (determined as provided in section 271(b) (1) and

(3)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency over—

(2) the amount of rebates, as defined in section 271(b) (2), made.

There shall then be ascertained the increase or decrease in the tax previously determined which results solely from the correct exclusion, inclusion, allowance, disallowance, recognition, or nonrecognition, of the item, inclusion, deduction, credit, gain, or loss, which was the subject of the error. The amount so ascertained (together with any amounts wrongfully collected, as additions to the tax or interest, as a result of such error) shall be the amount of the adjustment under this section.

(e) **Adjustment unaffected by other items, etc.** The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this section, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error.

(f) **No adjustment for years prior to 1932.** No adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932.

(g) **Taxes imposed by chapter 9.** The provisions of this section shall not be construed to apply to any tax imposed by chapter 9. 53 Stat. 471, amended Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 504(a), (c), 56 Stat. 957; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. I, § 14(b), 58 Stat. 246; Aug. 28, 1950, c. 809, Title II, § 208(c), 64 Stat. 544; Aug. 15, 1953, c. 512, Title II, § 211(a), (b), 67 Stat. 625.

Historical Note

1953 Amendment. Subsec. (b) amended by Act Aug. 15, 1953 which substituted the words "transaction; or" for "transaction—" in par. (5), added pars. (6) and (7), and, in the second sentence of subsec. (b), substituted the words "Except in cases described in paragraphs (6) and (7), such" for "Such".

1950 Amendment. Subsec. (g) added by Act Aug. 28, 1950.

1944 Amendment. Subsec. (d) amended by Act May 29, 1944, which omitted second sentence relating to ascertainment of amount of deduction, and inserted in lieu thereof sentence beginning "The amount of the tax previously determined" etc.

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to The Tax Court of the United States. See section 1100 of this title and notes thereunder.

Effective Date of 1953 Amendments. Section 211(c) of Act Aug. 15, 1953 provided that: "The amendments [to subsec. (b)] made by subsections (a) and (b) shall be effective as if included in the Internal Revenue Code at the time of its enactment [Feb. 10, 1939]. In any case in which the determination referred to in paragraph (6) or (7) of

section 3801(b) [this section], as amended by subsection (a) of this section, became final before the date of the enactment of this Act [Aug. 15, 1953] the one-year period described in section 3801 (c) [this section] shall be extended to include the one-year period beginning with the date of the enactment of this Act [Aug. 15, 1953]."

Effective Date of 1944 Amendment. Subsec. (e) of Act May 29, 1944, § 14, provided in part, "The amendment made by subsection (b) to section 3801(d) of the Internal Revenue Code shall, for the purposes of such section and sections 124, 130, and 3807 of such Code, be applicable in the determination of a tax previously determined only if such tax is for a taxable year beginning after December 31, 1942."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 15, 1953, see 1953 U.S. Code Cong. and Adm. News, p. 2423. See, also, Acts Aug. 28, 1950, 1950 U.S. Code Cong. Service, p. 3287; May 29, 1944, 1944 U.S. Code Cong. Service, p. 1056.

§ 3802. Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles

(a) **Rule of Exemption.** No internal-revenue tax shall be imposed with respect to articles imported by a consular officer of a foreign state or by an employee of a consulate of a foreign state whether such articles accompany the officer or employee to his post in the United States, its insular possessions, or the Panama Canal Zone, or are imported by him at any time during the exercise of his functions therein, if—

(1) such officer or employee is a national of the state appointing him and not engaged in any profession, business, or trade within the territory specified in subsection (a);

(2) the articles are imported by the officer or employee for his personal or official use; and

(3) the foreign state grants an equivalent exemption to corresponding officers or employees of the Government of the United States stationed in such foreign state.

(b) **Certificate by Secretary of State.** The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign states which grant an equivalent exemption to the consular officers or employees of the Government of the United States stationed in such foreign states. Added May 9, 1941, c. 96, 55 Stat. 184.

Historical Note

Former Section Renumbered. Former section 3802 was renumbered "3803" by Act May 9, 1941.

§ 3803. Separability clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby. Formerly § 3802, 53 Stat. 473; renumbered § 3803, May 9, 1941, c. 96, 55 Stat. 184.

Historical Note

Text of **Amendatory Revenue Acts**. volumes "Title 26—Internal Revenue Complete original text of Revenue Acts Acts". amending this section, 1939 to date, see

§ 3804. Time for performing certain acts postponed by reason of war

(a) **Individuals.** The period of time after December 6, 1941, during which an individual is continuously outside the Americas (if such period is longer than ninety days), and the next ninety days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by Chapter 9 or any law superseded thereby);

(B) payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by Chapter 9 or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;

(C) filing a petition with The Tax Court of the United States for re-determination of a deficiency, or for review of a decision rendered by the Tax Court;

- (D) allowance of a credit or refund of any tax;
- (E) filing a claim for credit or refund of any tax;
- (F) bringing a suit upon any such claim for credit or refund;
- (G) assessment of any tax;
- (H) giving or making any notice or demand, for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- (I) collection, by the Commissioner or the collector, by distraint or otherwise, of the amount of any liability in respect of any tax;
- (J) bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and
- (K) any other act required or permitted under the internal revenue laws specified in regulations prescribed under this section by the Commissioner with the approval of the Secretary;

(2) The amount of any credit or refund (including interest).

(b) **Other taxpayers and other circumstances.** In any case to which subsection (a) does not apply in which it is determined by the Commissioner, under regulations prescribed by him with the approval of the Secretary, that—

(1) By reason of an individual being outside the Americas, or

(2) By reason of any locality (within or without the Americas) being an area of enemy action or being an area under the control of the enemy, as determined by the Commissioner, or

(3) By reason of an individual in the military or naval forces of the United States being outside the States of the Union and the District of Columbia, it is impossible or impracticable to perform any one or more of the acts specified in subsection (a), then in determining, under the internal-revenue laws whether such act was performed within the time prescribed therefor, in respect of any tax liability (including any interest, penalty, additional amount, or addition to tax) affected by the failure to perform such act within such time and in determining the amount of any credit or refund (including interest) affected by such failure, there shall be disregarded such period after December 6, 1941, as may be prescribed by such regulations.

(c) **Limitation on time to be disregarded.** The period of time disregarded under this section shall not extend beyond the date specified in clause (1) or clause (2) of this subsection, whichever is the earlier:

(1) December 31, 1947, or such date later than December 31, 1947, as the Commissioner may fix in any case in which he makes a determination under subsection (b) if such determination is made after the date this subsection as amended takes effect and is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in paragraph (1), (2), or (3) of subsection (b); or

(2) in the case of an individual with respect to whom a period of time is disregarded under this section, the fifteenth day of the third month following the month in which an executor, administrator, or a conservator of the estate of such individual qualifies.

(d) **Exceptions**

(1) **Tax in jeopardy; bankruptcy and receiverships; and transferred assets.** Notwithstanding the provisions of subsection (a) or (b), any action or proceeding authorized by section 146 (regardless of the taxable year for which the tax arose), 273, 274, 311, 872, 900, 1013, 1015, 1025, or 3660, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Commissioner determines that collection of the amount of any assessment would be jeopardized

by delay, the provisions of subsections (a) and (b) shall not operate to stay collection of such amount by distraint or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a) or (b). In any case to which this paragraph relates, if the Commissioner or collector is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Commissioner or collector is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the war, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) **Action taken before ascertainment of right to benefits.** The assessment or collection of any internal revenue tax or of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a) or (b), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a) or (b).

(3) **Expiration of period of limitations prior to enactment of this section.** This section shall not operate to extend the time for performing any act specified in subsection (a) (1) (G), (H), (I), or (J) if such time under the law in force prior to the date of enactment of this section expired prior to such date.

(e) **Definitions.** For purposes of this section—

(1) **Americas.** The term "Americas" means North, Central, and South America (including the West Indies but not Greenland), and the Hawaiian Islands.

(2) **When individual ceases to be outside Americas or within an area of enemy action.** For the purpose of determining whether any act specified in subsection (a) (1) (G), (H), (I), or (J) was performed within the time prescribed therefor, if any period of time is disregarded under this section by reason of any individual being outside the Americas or within an area of enemy action or control, such individual shall not, if he returns to the Americas or leaves such area after the date of enactment of this section, be deemed to have returned to the Americas or ceased to be within such area before the date upon which the Commissioner receives from such individual a notice thereof in such form as the Commissioner, with the approval of the Secretary, shall by regulations prescribe. A similar rule shall be applied in the case of a member of the military or naval forces of the United States with respect to whom a period of time is disregarded under this section by reason of being outside the States of the Union and the District of Columbia.

(3) **When executor, administrator, or conservator qualifies.** For the purpose of determining whether any act specified in subsection (a) (1) (G), (H), (I), or (J) was performed within the time prescribed therefor, the month in which an executor, administrator, or conservator qualifies, if he qualifies after the date of enactment of this section, shall be deemed to be the month in which the Commissioner receives from him a notice thereof in such form as the Commissioner, with the approval of the Secretary, shall by regulations prescribe.

(f) Additional time to be disregarded. In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for the purposes of section 22(b) (13), at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for the purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of time disregarded under this section, notwithstanding the limitations of subsections (a) and (c), shall include the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next one hundred and eighty days thereafter. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, §§ 504(a), (c), 507(a), 56 Stat. 957, 961, amended Aug. 8, 1947, c. 515, § 13, 61 Stat. 919; Jan. 2, 1951, c. 1196, 64 Stat. 1136.

Historical Note

References in Text. The date referred to in the phrase "after the date this subsection as amended takes effect", in subsec. (c) (1), was the date of enactment of the amendment by Act Aug. 8, 1947.

Date of enactment of this section, referred to in subssecs. (d) (3) and (e) (2) and (3) was Oct. 21, 1942.

1951 Amendment. Subsec. (f) added by Act Jan. 2, 1951.

1947 Amendment. Subsec. (c) amended by Act Aug. 8, 1947, to provide that no period of time after Dec. 31, 1947, may be disregarded under this section except, under certain limitations, in cases in which the Commissioner makes a determination under subsec. (b) of this section after Aug. 8, 1947.

Change of Name. Act Oct. 21, 1942, changed the name of the Board of Tax Appeals to the Tax Court of the United States. See section 1100 of this title and notes thereunder.

Effective Date. Section 507(c) of Act Oct. 21, 1942, provided as follows: "(c) The provisions of sections 3804 and 3805, as added by subsection (a) of this section, shall be effective as if they were enacted on December 7, 1941; except that the phrase 'date of enactment of this section', when used in subsections (d) (3) and (e) (2) and (3) of section 3804, means the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.]. Any amount of interest, penalty, additional amount, or addition to the tax otherwise allowable as a refund or credit under the internal-revenue laws (including sections 3805 and 3804, except subsection (d) (2)) may be refunded or credited without regard to section 3804(d) (2). No interest shall be allowed or paid by the United States upon any amount refunded or credited by reason of this subsection."

Limitation of Section under Other Laws. Section 507(b) (1, 2A) of Act Oct. 21, 1942, provided as follows:

"(b) (1) The amendments made by this section [adding sections 3804 and 3805 of this title and section 527 of Appendix to Title 50] shall not be construed to shorten any period fixed under the provisions of section 13 or 14 of the Act approved March 7, 1942 (Public Law 490—77th Congress), [50 U.S.C.A.App. §§ 1013, 1014] within which any act may be done, except that any action or proceeding authorized under section 3804(d) (1) of the Internal Revenue Code, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted without regard to the period so fixed.

"(2) (A) The amendments made by this section [adding sections 3804 and 3805 of this title and section 527 of Appendix to Title 50] shall not be construed to shorten any period fixed under the provisions of section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C.A.App. § 573] within which any act may be done, except that any action or proceeding authorized under section 3804(d) (1) of the Internal Revenue Code, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted without regard to the period so fixed."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Jan. 2, 1951, see 1951 U.S. Code Cong. Service, p. 4259. See, also, Act Aug. 8, 1947, 1947 U.S. Code Cong. Service, p. 1668.

§ 3805. Income tax due dates postponed in case of China Trade Act Corporations

In the case of any taxable year beginning after December 31, 1948, and ending before October 1, 1953, no Federal income tax return of, or payment of any Federal income tax by, any corporation organized under the China Trade Act of 1922 (42 Stat. 849, U.S.C., Title 15, chapter 4), as amended, shall become due until December 31, 1953, but only with respect to any such corporation and any such taxable year which the Secretary may determine reasonable under the circumstances in China pursuant to such regulations as he may prescribe. Such due date shall be subject to the power of the Secretary to extend the time for filing such return or paying such tax, as in other cases. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 507(a), 56 Stat. 961, amended Aug. 8, 1947, c. 515, § 14, 61 Stat. 919; Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title VI, § 614, 65 Stat. 569.

Historical Note

1951 Amendment. Act Oct. 20, 1951 amended section by changing the former reference to "any taxable year beginning after December 31, 1940" to "any taxable year beginning after December 31, 1948, and ending before October 1, 1953", and by extending the due date for filing returns and paying the tax from December 31, 1947 to December 31, 1953, subject to reasonable determinations by the Secretary.

1947 Amendment. Act Aug. 8, 1947, amended section to terminate as of Dec. 31, 1947, the wartime extension in the case of China Trade Act corporations of the due dates for filing income tax returns and payment of tax.

Effective Date. Section 507(c) of Act Oct. 21, 1942, provided as follows: "(c) The provisions of sections 3804 and 3805, as added by subsection (a) of this section, shall be effective as if they were enacted on December 7, 1941; except that the phrase 'date of enactment of this section', when used in subsections (d) (3) and (e) (2) and (3) of section 3804, means the date of enactment of this Act [Oct. 21, 1942, 4:30 p. m., E.W.T.]. Any amount of interest, penalty, additional

amount, or addition to the tax otherwise allowable as a refund or credit under the internal-revenue laws (including sections 3805 and 3804, except subsection (d) (2)) may be refunded or credited without regard to section 3804(d) (2). No interest shall be allowed or paid by the United States upon any amount refunded or credited by reason of this subsection."

Limitation of Section under Other Laws. See note under section 3804 of this title.

Treaty Obligations. Section 615 of Act Oct. 20, 1951, provided that: "No amendment made by this Act [Act Oct. 20, 1951] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Oct. 20, 1951, see 1951 U.S.Code Cong.Service, p. 1781.

§ 3806. Mitigation of effect of renegotiation of war contracts or disallowance of reimbursement

(a) Reduction for prior taxable year

(1) Excessive profits eliminated for prior taxable year. In the case of a contract with the United States or any agency thereof, or any subcontract thereunder, which is made by the taxpayer, if a renegotiation is made in respect of such contract or subcontract and an amount of excessive profits received or accrued under such contract or subcontract for a taxable year (hereinafter referred to as "prior taxable year") is eliminated and, in a taxable year ending after December 31, 1941, the taxpayer is required to pay or repay to the United States or any agency thereof the amount of excessive profits eliminated or the amount of excessive profits eliminated is applied as an offset against other amounts due the taxpayer, the part of the contract or subcontract price which was received or was accrued for the prior taxable year shall be reduced by the amount of excessive profits eliminated. For the purposes of this section—

(A) The term "renegotiation" includes any transaction which is a renegotiation within the meaning of the Federal renegotia-

tion act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

(B) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(C) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

(D) The term "Federal renegotiation act" includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended or supplemented,¹ the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented.

(2) **Reduction of reimbursement for prior taxable year.** In the case of a cost-plus-a-fixed-fee contract between the United States or any agency thereof and the taxpayer, if an item for which the taxpayer has been reimbursed is disallowed as an item of cost chargeable to such contract and, in a taxable year beginning after December 31, 1941, the taxpayer is required to repay the United States or any agency thereof the amount disallowed or the amount disallowed is applied as an offset against other amounts due the taxpayer, the amount of the reimbursement of the taxpayer under the contract for the taxable year in which the reimbursement for such item was received or was accrued (hereinafter referred to as "prior taxable year") shall be reduced by the amount disallowed.

(3) **Deduction disallowed.** The amount of the payment, repayment, or offset described in paragraph (1) or paragraph (2) shall not constitute a deduction for the year in which paid or incurred.

(4) **Exception.** The foregoing provisions of this subsection shall not apply in respect of any contract if the taxpayer shows to the satisfaction of the Commissioner that a different method of accounting for the amount of the payment, repayment, or disallowance clearly reflects income, and in such case the payment, repayment, or disallowance shall be accounted for with respect to the taxable year provided for under such method, which for the purposes of subsections (b) and (c) shall be considered a prior taxable year.

(b) **Credit against repayment on account of renegotiation or allowance**

(1) **General rule.** There shall be credited against the amount of excessive profits eliminated the amount by which the tax for the prior taxable year under Chapter 1, Chapter 2A, Chapter 2B, Chapter 2D, and Chapter 2E, is decreased by reason of the application of paragraph (1) of subsection (a); and there shall be credited against the amount disallowed the amount by which the tax for the prior taxable year under Chapter 1, Chapter 2A, Chapter 2B, Chapter 2D, and Chapter 2E, is decreased by reason of the application of paragraph (2) of subsection (a).

(2) **Special rules as to individuals for 1942 and 1943.** In the case of an individual subject to the provisions of sections 58, 59, and 60 of Chapter 1 and to the provisions of section 6 of the Current Tax Payment Act of 1943—

(A) No credit shall be allowed under paragraph (1) of this subsection for any amount by which the tax for the taxable year 1942

under Chapter 1 is decreased by the application of paragraph (1) or paragraph (2) of subsection (a). If, contrary to the foregoing provisions of this subparagraph, any part of the amount shown on the return as such tax for the taxable year 1942 or any part of an amount assessed as such tax for such year or as an addition to such tax is credited against excessive profits eliminated for such year or against an amount disallowed for such year, the individual shall pay into the Treasury an amount equal to the amount of such credit, and if such amount is not voluntarily paid, the Commissioner shall, despite the provisions of the Current Tax Payment Act of 1943, collect the same under the usual methods employed to collect the tax imposed by Chapter 1. For the purposes of this section the amount required by this subparagraph to be paid into the Treasury shall be considered as an amount of excessive profits eliminated for the taxable year 1942, or an amount disallowed for such year, as the case may be; and despite the provisions of the Current Tax Payment Act of 1943, the payment of such amount shall not be considered as payment on account of the tax or estimated tax for the taxable year 1943.

(B) In the case of a renegotiation with respect to the taxable year 1942 which is made after the enactment of the Current Tax Payment Act of 1943 and prior to the date on which the individual files his return for the taxable year 1943 and with respect to which payment or repayment of the excessive profits eliminated or any part thereof is deferred by agreement, if the amount shown as the tax on the return for the taxable year 1943 reflects the application of paragraph (1) of subsection (a) with respect to the taxable year 1942 and is computed in accordance with the provisions of section 6 of the Current Tax Payment Act of 1943, there shall be credited against the excessive profits eliminated for the taxable year 1942 the amount by which the sum of the estimated tax previously paid for the taxable year 1943 and the payments on account of the taxable year 1942 which are treated as payments on account of the estimated tax for the taxable year 1943, exceeds the amount shown as the tax on the return for the taxable year 1943: *Provided*, That the amount allowable as a credit under the foregoing provisions of this subparagraph shall not exceed (i) the amount of credit of overpayment of tax provided for in the agreement deferring payment or repayment of excessive profits eliminated or (ii) the amount of excessive profits eliminated for the taxable year 1942 which, at the time the credit is allowed, have not been paid or repaid to the United States or an agency thereof or applied as an offset against other amounts due the individual. If any credit is allowed under this subparagraph, no other credit or refund under the internal revenue laws shall be made on account of the amount so allowed with respect to the taxable year 1943. Any credit of overpayment of tax allowed pursuant to the agreement deferring payment or repayment of excessive profits eliminated shall be considered as a credit allowed under this subparagraph.

(C) Except as prevented by the provisions of the foregoing subparagraph (B), there shall be credited against the amount of excessive profits eliminated for the taxable year 1942 the amount by which the tax for the taxable year 1943 as computed under section 6 of the Current Tax Payment Act of 1943 is decreased by reason of the application of paragraph (1) of subsection (a) with respect to the taxable year 1942; and there shall be credited against the amount disallowed for the taxable year 1942 the amount by which the tax for the taxable year 1943 as computed under section 6 of the Current Tax Payment Act of 1943 is decreased by reason of the application of paragraph (2) of subsection (a) with respect to the taxable year 1942.

For the purposes of the foregoing provisions of this paragraph, the terms "taxable year 1942" and "taxable year 1943" shall have the meanings assigned to them by section 6(g) of the Current Tax Payment Act of 1943.

(3) **Credit for barred year.** If at the time of the payment, repayment, or offset described in paragraph (1) or paragraph (2) of subsection (a), refund or credit of tax under Chapter 1, Chapter 2A, Chapter 2D, or Chapter 2E, for the prior taxable year, is prevented (except for the provisions of section 3801) by any provision of the internal-revenue laws other than section 3761, or by rule of law, the amount by which the tax for such year under such chapters is decreased by the application of paragraph (1) or paragraph (2) of subsection (a) shall be computed under this paragraph. There shall first be ascertained the tax previously determined for the prior taxable year. The amount of the tax previously determined shall be the excess of—

(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return (determined as provided in section 271(b) (1) and (3)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in section 271(b) (2), made. There shall then be ascertained the decrease in tax previously determined which results solely from the application of paragraph (1) or paragraph (2) of subsection (a) to the prior taxable year. The amount so ascertained, together with any amounts collected as additions to the tax or interest, as a result of paragraph (1) or paragraph (2) of subsection (a) not having been applied to the prior taxable year shall be the amount by which such tax is decreased.

(4) **Interest.** In determining the amount of the credit under this subsection no interest shall be allowed with respect to the amount ascertained under paragraph (1) or paragraph (2); except that if interest is charged by the United States or the agency thereof on account of the disallowance for any period before the date of the payment, repayment, or offset, the credit shall be increased by an amount equal to interest on the amount ascertained under either such paragraph at the same rate and for the period (prior to the date of the payment, repayment, or off-set) as interest is so charged.

(c) **Credit in lieu of other credit or refund.** If a credit is allowed under subsection (b) with respect to a prior taxable year no other credit or refund under the internal-revenue laws founded on the application of subsection (a) shall be made on account of the amount allowed with respect to such taxable year. If the amount allowable as a credit under subsection (b) exceeds the amount allowed under such subsection, the excess shall, for the purposes of the internal-revenue laws relating to credit or refund of tax, be treated as an overpayment for the prior taxable year which was made at the time the payment, repayment, or offset was made. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 508, 56 Stat. 964; Feb. 25, 1944, 12:49 p. m., E. W. T., c. 63, Title VII, § 701(c) (1-3), 58 Stat. 90; May 29, 1944, 7 p. m., E. W. T., c. 210, Pt. 1, § 14(b), 58 Stat. 246; Mar. 23, 1951, c. 15, Title II, § 203, 65 Stat. 25.

Historical Note

References in Text. Section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 523, 77th Cong., 2d Sess.), referred to in subsec. (a) (1) (D), is the Renegotiation Act and is set out as section 1191 of Appen-

dix to Title 50, War and National Defense.

The Renegotiation Act of 1943, referred to in subsec. (a) (1) (D), is set out as section 1193 of Appendix to Title 50, War and National Defense.

The Renegotiation Act of 1951, referred to in subsec. (a) (1) (D), is set out as sections 1211-1233 of Appendix to Title 50, War and National Defense.

Section 6 of the Current Tax Payment Act of 1943, referred to throughout subsec. (b), is set out as a note under section 1622 of this title.

Chapter 2B, referred to in subsec. (b) (1), relating to declared value excess-profits tax, was repealed by Act Nov. 8, 1945, c. 453, Title II, § 202, 59 Stat. 574.

Chapter 2E, referred to in subsec. (b) (1) (3), relating to excess profits tax, was repealed as follows: sections 741 and 752 by Act Oct. 21, 1942, 4.30 p. m., E.W.T., c. 619, Title II, § 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710-736, 740, 742-744, 750, 751, 760, 761, and 780-784 by Act Nov. 8, 1945, c. 453, Title I, § 122(a), 59 Stat. 568.

The Current Tax Payment Act of 1943, referred to in subsec. (b) (2) (A), (B), affected sections 22, 34, 35, 56, 58-60, 145, 217, 218, 294, 294 note, 322, prec. 421, 421, 476, 476 note, 811 note, 1000 note, prec. 1621, 1622, 1622 note, 1623-1632, 3770, 3771, 3790, prec. 3905, 3906 of this title.

The enactment of the Current Tax Payment Act of 1943, referred to in subsec. (b) (2) (B), took place on June 9, 1943.

1951 Amendment. Subsec. (a) (1) amended by Act Mar. 23, 1951, which struck out subpars. (A-C) and inserted in lieu thereof subpars. (A-D) to make appropriate references to the Renegotiation Acts of 1948 and 1951 as well as the original Renegotiation Act.

1944 Amendment. Subsec. (a) (1) (B) and (a) (1) (C) amended by Act Feb. 25, 1944, which struck out "by the Revenue Act of 1942".

Subsec. (b) amended by Act Feb. 25, 1944, which inserted "Chapter 2B" immediately following "Chapter 2A" wher-

ever appearing in pars. (1) and (2), renumbered pars. (2) and (3) to be pars. (3) and (4), respectively, and inserted a new par. (2).

Subsec. (b) (3) amended by Act May 29, 1944, which omitted third sentence relating to credit for barred year, and inserted in lieu thereof sentence beginning "The amount of the tax previously determined" etc.

Effective Date of 1944 Amendment. Subsec. (e) of Act May 29, 1944, § 14, provided in part: "The amendment made by subsection (b) to section 3806(b) (3) of such Code shall, for the purposes of such section, be applicable in the determination of a tax previously determined only if such tax is for a taxable year beginning after December 31, 1942."

Amendments to subsecs. (a) (1) (B), (a) (1) (C), (b) (1), (b) (2) [renumbered 3], (b) (4) by Act Feb. 25, 1944, § 701(C) (1-3), cited to text, were effective on Feb. 25, 1944, 12:49 p. m., E.W.T.

Amendments made by addition of subsec. (b) (2) to section by Act Feb. 25, 1944, § 701(c) (3), were made effective by section 701(c) (4) thereof, which provided as follows: "The amendments made by paragraph (2) shall be effective as if they were a part of section 3806 of the Internal Revenue Code on the date of the enactment of the Revenue Act of 1942."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History and Congressional Comment: For legislative history and purpose of Act Mar. 23, 1951, see 1951 U.S.Code Cong.Service, p. 1339. See, also, Act May 29, 1944, 1944 U.S.Code Cong. Service, p. 1056.

§ 3807. Repealed. Jan. 3, 1951, 10:13 a. m., c. 1199, Title III, § 304 (c), 64 Stat. 1220

Historical Note

Section, as added Feb. 25, 1944, c. 63, Title V, § 513(a), 58 Stat. 75, related to limitation periods in case of related taxes under chapters 1 and 2.

Effective Date. Repeal of section as applicable with respect to taxable years ending after June 30, 1950, see note set out under section 114 of this title.

§ 3808. Deferment of tax attributable to service pay for commissioned service and of tax attributable to pre-service earned income

(a) **Definitions.** As used in this section—

(1) **Tax attributable to service pay.** The term "tax attributable to service pay" means—

(A) in the case of a war year for which the taxpayer had no gross income other than compensation for active service as a member of the military or naval forces of the United States, the tax imposed under chapter 1 for such year; or

(B) in the case of a war year for which the taxpayer had gross income in addition to compensation for active service as a member of the military or naval forces of the United States, the excess of the tax imposed under chapter 1 for such year over the tax that would

have been imposed if such compensation had been excluded from gross income;

except that in the case of a commissioned officer (or a commissioned warrant officer) of the regular component of the Army, Navy, Marine Corps, or Coast Guard, such term shall not apply to any war year unless, at the time prescribed for the payment of the tax under chapter 1 for such year, a period of time was being disregarded under section 3804.

(2) War year. The term "war year"—

(A) when used with respect to the tax attributable to service pay means any taxable year beginning after December 31, 1939, and before January 1, 1947; and

(B) when used with respect to the tax attributable to pre-service earned income means any taxable year beginning after December 31, 1939, but before January 1, 1942, and before the taxpayer entered upon active service as a member of the military or naval forces of the United States, but does not include any year unless part of the tax imposed by chapter 1 for such year became due and payable after the taxpayer entered upon such active service.

(3) Tax attributable to pre-service earned income. The term "tax attributable to pre-service earned income" means the excess of the tax imposed by chapter 1 for any war year over the tax that would have been imposed for such year if there had been excluded from the net income for such year the amount of the earned net income (as such term was defined in section 25(a) (4) as in force with respect to such year, except that in computing such earned net income, compensation for active service in such forces shall be disregarded).

(4) First installment date. The term "first installment date" means May 15, 1946, in the case of taxpayers released from active duty in the military or naval forces of the United States prior to December 1, 1945; and in other cases June 15, 1947, or the fifteenth day of the sixth month which begins after the date of the taxpayer's release from active duty in such forces, whichever is the earlier; except that, if the first installment date with respect to any war year would otherwise occur earlier than the fifteenth day of the third month following the close of such year, the first installment date with respect to such year shall be the fifteenth day of such third month.

(b) Extension of time for payment. Upon application with respect to any war year, made prior to the first installment date, and under regulations prescribed by the Commissioner with the approval of the Secretary—

(1) the time for payment of an amount of the tax under chapter 1 for such year which is equal to the tax attributable to service pay for such year and which has not been paid before the filing of such application; and

(2) the time for the payment of an amount of the tax under chapter 1 for such year which is equal to the tax attributable to pre-service earned income for such year and which has not been paid before the filing of such application,

shall, in lieu of the time otherwise applicable, be as follows: one-twelfth thereof on the first installment date and an additional twelfth thereof every three months thereafter until such tax is paid.

(c) Suspension of period of limitation. The running of the period of limitation provided in section 276(c) (relating to the collection of the tax after assessment) in respect of any tax the time for the payment of which is prescribed under subsection (b), shall be suspended for the period beginning with the date of the filing of the application under such subsection and ending six months after the date prescribed therein for the payment of the last installment of such tax.

(d) **Estimated tax.** If the taxpayer is eligible for the benefits of subsection (b) with respect to any war year—

(1) for the purposes of the application of section 58 with respect to such year, compensation for active service as a member of the military or naval forces of the United States may be disregarded in determining the gross income reasonably expected for such year, and in determining the estimated tax for such year; and

(2) for the purposes of section 294(d) the tax for such year shall be determined as if such compensation were excluded from gross income.

This subsection shall not apply with respect to a taxpayer for any war year who at the time prescribed for making the declaration of estimated tax for such year is a commissioned officer (or a commissioned warrant officer) of the regular component of the Army, Navy, Marine Corps, or Coast Guard. Added Nov. 8, 1945, 5:17 p. m., E. S. T., c. 453, Title I, § 142(a), 59 Stat. 572.

Historical Note

Refund of Interest Paid. Act Nov. 8, 1945, § 142(b), provides as follows:

"(b) **Refund of interest paid.** Any interest paid prior to the date of the enactment of this Act [Nov. 8, 1945] with respect to tax attributable to service pay for any war year, or with respect to tax attributable to pre-service earned income

for any war year, shall be credited or refunded if claim therefor is filed with the Commissioner prior to January 1, 1947."

Congressional Comment: For legislative history and purpose of Act Nov. 8, 1945, see 1945 U.S. Code Cong. Service, p. 814.

§ 3809. Verification of returns; penalties of perjury

(a) **Penalties.** Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

(b) **Signature presumed correct.** The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(c) **Verification in lieu of oath.** The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required. Added Aug. 27, 1949, c. 517, § 4(a), 63 Stat. 667.

Historical Note

Effective Date. Section 4(c) of Act Aug. 27, 1949, provided that: "The amendments made by this section shall be applicable with respect to any return, statement, or document filed after the date

of the enactment of this Act [Aug. 27, 1949]."

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S. Code Cong. Service, p. 1876.

§ 3810. Effective date in case of Puerto Rico

If the Governor of Puerto Rico certifies to the President of the United States that the legislature of Puerto Rico has, by concurrent resolution, resolved that it desires the extension to Puerto Rico of the provisions of title II of the Social Security Act, the effective date referred to in sections 1426(e), 481(a) (7), and 481(b) shall be January 1 of the first calendar

year which begins more than ninety days after the date on which the President receives such certification. Added Aug. 28, 1950, c. 809, Title II, § 208(b), 64 Stat. 543.

Historical Note

Reference in Text. "Title II of the Social Security Act" referred to in the text is classified to subchapter II of chapter 7 of Title 42, The Public Health and Welfare.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

§ 3811. Collection of taxes in Puerto Rico and Virgin Islands

(a) **Puerto Rico.** Notwithstanding any other provision of law respecting taxation in Puerto Rico, all taxes imposed by chapter 1, and by subchapters A and D of chapter 9, shall be collected under the direction of the Secretary and shall be paid into the Treasury of the United States as internal revenue collections. All provisions of the laws of the United States applicable to the administration, collection, and enforcement of any tax imposed upon the incomes of individuals, estates, and trusts by chapter 1 (including the provisions relating to The Tax Court of the United States), and of any tax imposed by subchapter A or by subchapter D of chapter 9, shall, in respect to such tax, extend to and be applicable in Puerto Rico in the same manner and to the same extent as if Puerto Rico were a State, and as if the term "United States" when used in a geographical sense included Puerto Rico.

(b) **Virgin Islands.** Notwithstanding any other provision of law respecting taxation in the Virgin Islands, all taxes imposed by subchapter E of chapter 1, and by subchapter A of chapter 9, shall be collected under the direction of the Secretary and shall be paid into the Treasury of the United States as internal revenue collections. All provisions of the laws of the United States applicable to the administration, collection, and enforcement of the tax imposed by subchapter E of chapter 1 (including the provisions relating to The Tax Court of the United States), and of any tax imposed by subchapter A of chapter 9, shall, in respect to such tax, extend to and be applicable in the Virgin Islands in the same manner and to the same extent as if the Virgin Islands were a State, and as if the term "United States" when used in a geographical sense included the Virgin Islands.

(c) **Definition.** As used in this section, the term "tax" includes any penalty with respect to the tax, any addition to the tax, and any additional amount with respect to the tax, provided for by any law of the United States. Added Aug. 28, 1950, c. 809, Title II, § 208(b), 64 Stat. 543, amended Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title II, § 221(i), 64 Stat. 946.

Historical Note

1950 Amendment. Act Sept. 23, 1950, amended section by dividing it into subsections, by making all laws of the United States relating to administration, collection, and enforcement of taxes applicable to Puerto Rico and the Virgin Islands, and by defining the term "tax".

Effective Date of 1950 Amendment. Section 221(k) of Act Sept. 23, 1950, provided in part that the amendment of this section should become effective on Sept. 23, 1950.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amend-

ment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 3053.

§ 3812

MISCELLANEOUS PROVISIONS

§ 3812. Mitigation of effect of statute of limitations and other provisions in case of related taxes under different chapters

(a) **Self-employment tax and tax on wages.** In the case of the tax imposed by subchapter E of chapter 1 (relating to tax on self-employment income) and the tax imposed by section 1400 of subchapter A of chapter 9 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) (i) if an amount is erroneously treated as self-employment income, or

(ii) if an amount is erroneously treated as wages, and

(2) if the correction of the error would require an assessment of one such tax and the refund or credit of the other tax, and

(3) if at any time the correction of the error is authorized as to one such tax but is prevented as to the other tax by any law or rule of law (other than section 3761, relating to compromises), then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 3761, relating to compromises).

(b) **Definitions.** For the purposes of subsection (a) of this section, the terms "self-employment income" and "wages" shall have the same meaning as when used in section 481(b). Added Aug. 28, 1950, c. 809, Title II, § 208(b), 64 Stat. 543.

Historical Note

References in Text. The "Federal Insurance Contributions Act", referred to in subsec. (a) is classified to sections 1400-1432 of this title.

§ 3813. Requirements for exemption of certain organizations under section 101(6) and for deductibility of contributions made to such organizations

(a) **Organizations to which section applies.** This section shall apply to any organization described in section 101(6) except—

(1) a religious organization (other than a trust);

(2) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

(3) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101(6)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public;

(4) an organization which is operated, supervised, controlled, or principally supported by a religious organization (other than a trust) which is itself not subject to the provisions of this section; and

(5) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research.

(b) **Prohibited transactions.** For the purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 24(b) (2) (D)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 per centum or more of the total combined voting power of all classes of stock entitled to vote or 50 per centum or more of the total value of shares of all classes of stock of the corporation.

(c) **Denial of exemption to organizations engaged in prohibited transactions.**

(1) **General rule.** No organization subject to the provisions of this section which has engaged in a prohibited transaction after July 1, 1950, shall be exempt from taxation under section 101(6).

(2) **Taxable years affected.** An organization shall be denied exemption from taxation under section 101(6) by reason of paragraph (1) only for taxable years subsequent to the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(d) **Future status of organization denied exemption.** Any organization denied exemption under section 101(6) by reason of the provisions of subsection (c), with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed.

(e) **Disallowance of certain charitable, etc., deductions.** No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section 23(o) (2), 23(q) (2), 162(a), 505(a) (2), 812(d), 861(a) (3), 1004(a) (2) (B), or 1004(b) (2) or (3), shall be allowed as a deduction if made to an organization which, in the taxable year of the organization in which the gift or bequest is made, is not exempt under section 101(6), by reason of the provisions of this section. With respect to any taxable

year of the organization for which the organization is not exempt pursuant to the provisions of subsection (c) by reason of having engaged in a prohibited transaction with the purpose of diverting the corpus or income of such organization from its exempt purposes and such transaction involved a substantial part of such corpus or income, and which taxable year is the same, or prior to the, taxable year of the organization in which such transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 24(b) (2) (D)) was a party to such prohibited transaction.

(f) Definition. For the purposes of this section, the term "gift or bequest" means any gift, contribution, bequest, devise, legacy, or transfer. Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 331, 64 Stat. 957.

Historical Note

Effective Date of Subsecs. (c)-(e). Section 333 of Act Sept. 23, 1950, provided in part that subsecs. (c) and (d) should apply with respect to taxable years beginning after Dec. 31, 1950, and subsec. (e) should apply only with respect to gifts or bequests (as defined in this section) made on or after Jan. 1, 1951.

Treaty Obligations. Section 214 of Act Sept. 23, 1950, provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 3814. Denial of exemption under section 101(6) in the case of certain organizations accumulating income

In the case of any organization described in section 101(6) to which section 3813 is applicable, if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(1) are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under section 101(6); or

(2) are used to a substantial degree for purposes or functions other than those constituting the basis for such organization's exemption under section 101(6); or

(3) are invested in such a manner as to jeopardize the carrying out of the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under section 101(6), exemption under section 101(6) shall be denied for the taxable year. Added Sept. 23, 1950, 3:15 p. m., E. D. T., c. 994, Title III, Pt. III, § 331, 64 Stat. 957.

Historical Note

Effective Date. Section 333 of Act Sept. 23, 1950, provided in part that this section should apply with respect to taxable years beginning after Dec. 31, 1950.

Treaty Obligations. Section 214 of Act Sept. 23, 1950 provided that: "No amendment made by this Act [Act Sept. 23, 1950] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

SUBTITLE E.—PERSONNEL

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CHAPTER 39.—THE OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE

SUBCHAPTER A.—THE COMMISSIONER

Sec.
3900. Appointment and salary.
3901. Powers and duties.

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3905. Appointment.
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SUBCHAPTER A.—THE COMMISSIONER

§ 3900. Appointment and salary

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to basic compensation at the rate of \$15,000 per annum. 53 Stat. 477, amended Oct. 15, 1949, c. 695, § 5(a), 63 Stat. 880.

Historical Note

1949 Amendment. Act Oct. 15, 1949, increased compensation of Commissioner from \$10,000 to \$15,000 per annum.

Effective Date of 1949 Amendment. The increased compensation provided for by Act Oct. 15, 1949, took effect on the first day of the first pay period which

began after Oct. 15, 1949 by the provisions of section 9 of said Act Oct. 15, 1949, which is set out as a note under section 3 of Title 5, Executive Departments and Government Officers and Employees.

§ 3901. Powers and duties

(a) **Assessment and collection.** The Commissioner, under the direction of the Secretary—

(1) **General superintendence.** Shall have general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue; and

(2) **Regulations, forms, stamps, and dies.** Shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue; and shall provide hydrometers, and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting the several stamp taxes, or, in the case of percentage taxes, the amount thereof; and alter and renew or replace such stamps from time to time, as occasion may require.

(3) **Estimate of expense.** The Commissioner shall estimate in detail by collection districts the expense of assessing and the expense of the collection of internal revenue.

(b) **Detail of personnel from field service**

(1) **In general.** The Commissioner may order any officer or employee of the internal revenue service engaged in field work to duty with the Bureau of Internal Revenue in the District of Columbia, for such periods as the Secretary may prescribe, and to any designated post of duty outside the District of Columbia, upon the completion of such duty.

(2) **Revenue agents.** Nothing in section 6 of the Act of June 22, 1906, c. 3514, 34 Stat. 449 (U.S.C., Title 5, § 39) shall be construed to prevent the Commissioner from detailing one revenue agent for duty in his office. 53 Stat. 477.

SUBCHAPTER B.—ASSISTANT COMMISSIONERS

§ 3905. Appointment

There shall be in the Bureau of Internal Revenue two Assistant Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. 53 Stat. 478, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 9, 57 Stat. 150.

Historical Note

1943 Amendment. Act June 9, 1943, substituted "two Assistant Commissioners", for "one Assistant to the Commissioner."

Applicability of 1950 Reorg. Plan No. 26 to Revenue Act of 1951. Section 616 of the Revenue Act of 1951 (Oct. 20, 1951, c. 521, Title VI, 65 Stat. 569), provided that the provisions of 1950 Reorg. Plan No. 26 (set out in note preceding section 1 of this title and section 133z-15

of Title 5, Executive Departments and Government Officers and Employees) should be applicable to all functions vested by such Act in any officer, employee, or agency of the Department of the Treasury.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

§ 3906. Duties

The Assistant Commissioners shall perform such duties as may be prescribed by the Commissioner or required by law. 53 Stat. 478, amended June 9, 1943, 7 p. m., E. W. T., c. 120, § 9, 57 Stat. 150.

Historical Note

1943 Amendment. Act June 9, 1943, substituted "Assistant Commissioners", for "Assistant to the Commissioner."

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

SUBCHAPTER C.—SPECIAL DEPUTY COMMISSIONER

§ 3910. Appointment

There shall be in the Bureau of Internal Revenue one Special Deputy Commissioner, who shall be appointed by the President, by and with the advice and consent of the Senate. 53 Stat. 478.

§ 3911. Duties

The Special Deputy Commissioner shall perform such duties as may be prescribed by the Commissioner or required by law. 53 Stat. 478.

SUBCHAPTER D.—DEPUTY COMMISSIONERS

§ 3915. Employment

There may be employed in the Bureau of Internal Revenue five deputy commissioners. 53 Stat. 478.

§ 3916. Duties

(a) In general. The Commissioner is authorized to assign to deputy commissioners such duties as he may prescribe.

(b) To act as Commissioner. The Secretary may designate any deputy commissioner to act as Commissioner during the Commissioner's absence. 53 Stat. 478.

SUBCHAPTER E.—CHEMISTS AND MICROSCOPISTS

§ 3920. Appointment of analytical chemist and microscopist

There shall be in the office of the Commissioner an analytical chemist and a microscopist, who shall each be appointed by the Secretary. 53 Stat. 478.

§ 3921. Employment of additional chemists and microscopists

The Commissioner may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists. 53 Stat. 478.

CHAPTER 40.—THE OFFICES OF GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY AND ASSISTANT GENERAL COUNSEL FOR THE BUREAU OF INTERNAL REVENUE

Sec.

3930. General Counsel—Appointment, salary, and duties.

3931. Assistant General Counsel—Appointment, salaries, and duties.

3932. Functions of Department of Justice unaffected.

§ 3930. General counsel—Appointment, salary, and duties

(a) There shall be in the Department of the Treasury the office of General Counsel for the Department of the Treasury (hereinafter in this chapter referred to as the "General Counsel"). The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$10,000 per annum. The General Counsel shall be the chief law officer of the Department, and shall perform such duties in respect of the legal activities thereof as may be prescribed by the Secretary or required by law.

(b) The General Counsel shall have such powers, duties, and functions as were formerly vested in and exercised by the offices of General Counsel for the Bureau of Internal Revenue, Assistant General Counsel for the Bureau of Internal Revenue, Solicitor of the Treasury, and Assistant Solicitor of the Treasury. 53 Stat. 479.

Historical Note

Classification of Civilian Positions. Compensation of General Counsel, see chapter 21 of Title 5, Executive Department and Government Officers and Employees.

§ 3931. Assistant General Counsel—Appointment, salaries, and duties

(a) The President is authorized to appoint, by and with the advice and consent of the Senate, an Assistant General Counsel for the Bureau of Internal Revenue and to fix his compensation at a rate not in excess of \$10,000 per annum. The Secretary may appoint and fix the duties of such other Assistant General Counsel (not to exceed five) and such other officers and employees as he may deem necessary to assist the General Counsel in the performance of his duties.

(b) The Secretary may designate one of the Assistant General Counsel to act as the General Counsel during the absence of the General Counsel. The General Counsel, with the approval of the Secretary, is authorized to delegate to any Assistant General Counsel any authority, duty, or function which the General Counsel is authorized or required to exercise or perform.

(c) The Assistant General Counsel appointed by the Secretary may be appointed and compensated without regard to the provisions of the Classification Act of 1949, and the Civil Service laws and shall receive compensation at such rate (not in excess of \$10,000 per annum) as may be fixed by the Secretary. 53 Stat. 479, amended Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

References in Text. The Classification Act of 1949 and the Civil Service laws, referred to in subsec. (c), are classified to chapters 21 and 12, respectively, of Title 5, Executive Departments and Government Officers and Employees.

1949 Amendment. Subsec. (c) amended by Act Oct. 28, 1949, which substituted the "Classification Act of 1949" in lieu of the "Classification Act of 1923, as amended."

§ 3932. Functions of Department of Justice unaffected

Nothing in this chapter shall be construed to affect the duties, powers, or functions imposed upon, or vested in the Department of Justice, or any officer thereof, by law existing on May 10, 1934. 53 Stat. 479.

CHAPTER 41.—COLLECTORS OF INTERNAL REVENUE

SUBCHAPTER A.—APPOINTMENT, COMPENSATION, AND BOND

Sec.

- 3940. Number.
- 3941. Appointment.
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SUBCHAPTER A.—APPOINTMENT, COMPENSATION, AND BOND

§ 3940. Number

The whole number of collectors of internal revenue shall not exceed sixty-five. 53 Stat. 480.

§ 3941. Appointment

(a) **In general.** The President, by and with the advice and consent of the Senate, shall appoint for each collection district a collector, who shall be a resident of the same.

(b) **Consolidation of collection districts.** When two or more collection districts are united by the President, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

(c) Recess of Senate

For commissions to fill vacancies occurring during recess of Senate, see section 3944(c) (1).

(d) Cross reference

For establishment, alteration, and number of collection districts, see section 3650. 53 Stat. 480.

§ 3942. Suspension

(a) Authority. Collectors may be suspended by the Commissioner for fraud, or gross neglect of duty, or abuse of power.

(b) Procedure. In case of the suspension of a collector, under the power conferred in subsection (a), the Commissioner shall, as soon thereafter as practicable, report the case to the President through the Secretary for such action as he may deem proper. 53 Stat. 481.

§ 3943. Bonds

(a) Original execution. Every collector, before entering upon the duties of his office, shall execute a bond for such amount as may be prescribed by the Commissioner, under the direction of the Secretary, with not less than five sureties, to be approved by the General Counsel for the Department of the Treasury, conditioned that said collector shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary, all public moneys which may come into his hands or possession.

(b) Renewal. Every collector shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary may direct, with such further conditions as the said Commissioner shall prescribe.

(c) Substitution. Every collector shall execute a new bond whenever required so to do by the Secretary, with such conditions as may be required by law or prescribed by the Commissioner, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the General Counsel for the Department of the Treasury.

(d) Filing. Said bonds shall be transmitted to the Secretary and filed as he may direct. 53 Stat. 481.

§ 3944. Salaries and office expenses allowed

(a) Allowance. Allowances shall be made by the Secretary, upon the recommendation of the Commissioner, for salary and office expenses of collectors: *Provided*, That the Secretary, on the recommendation of the Commissioner, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal revenue taxes collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

(b) Adjustment and limit of salaries. The salaries of collectors may be readjusted and increased under such regulations as may be prescribed by the Commissioner, subject to the approval of the Secretary, but no collector shall receive a salary in excess of the highest scheduled rate of compensation established by the Classification Act of 1949.

(c) Prerequisites to payment

(1) Confirmation by Senate. No collector shall be entitled to any portion of the salary pertaining to the office unless he shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

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(2) **Certificate of Commissioner.** No payment shall be made to collectors on account of salaries or office expenses, without the certificate of the Commissioner that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

(d) **Observance of fiscal year.** In adjusting the accounts of collectors, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed. 53 Stat. 481, amended Aug. 27, 1949, c. 517, § 11, 63 Stat. 669; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

References in Text. The Classification Act of 1949, referred to in subsec (b), is classified to chapter 21 of Title 5, Executive Departments and Government Officers and Employees.

1949 Amendment. Subsec. (b) amended by Acts Oct. 28, 1949 and Aug. 27, 1949, Act Oct. 28, 1949 substituted the "Classification Act of 1949" in lieu of "Classification Act of 1923, as amended, or by any law hereafter enacted superseding such Act". Act Aug. 27, 1949 removed

the \$7,500 limitation on collectors' salaries.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Aug. 27, 1949, see 1949 U.S.Code Cong.Service, p. 1876.

§ 3945. Repealed. Oct. 31, 1951, c. 654, § 1(53), 65 Stat. 703.

Historical Note

Section Prior To Repeal:

"§ 3945. **Payment of advertising, stationery, and postage expenses**

"There shall be paid, after the account thereof has been rendered to and approved by the General Accounting Office, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the per-

formance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states the date and the particular items of every such expenditure, and shall be verified by the oath of the collector. 53 Stat. 482."

SUBCHAPTER B.—ACCOUNTS, RECORDS, AND REPORTS

§ 3950. Charges and credits

(a) **Charges.** Every collector shall be charged with—

(1) **Taxes.** The whole amount of taxes, whether contained in lists transmitted to him by the Commissioner, or by other collectors, or delivered to him by his predecessor in office, and the additions thereto;

(2) **Stamps.** The par value of all stamps deposited with him; and

(3) **Moneys.** All moneys collected for penalties, forfeitures, fees, or costs.

(b) **Credits.** Every collector shall be credited with—

(1) **Payments into Treasury.** All payments into the Treasury made as provided by law;

(2) **Returned stamps.** All stamps returned by him uncanceled to the Treasury;

(3) **Taxes transmitted to other collectors.** The amount of taxes contained in the lists transmitted in the manner provided in section 3651 (b) to other collectors, and by them receipted as therein provided;

(4) **Taxes of insolvent or absconded persons.** The amount of the taxes of such persons as may have absconded or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected;

(5) **Uncollected taxes transferred to successor.** All uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner, who shall certify the facts to the General Accounting Office, that due diligence was used by the collector; and

(6) **Property purchased for United States.** The amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law. 53 Stat. 482.

§ 3951. Quarterly revenue account

Collectors shall render their revenue accounts quarterly. 53 Stat. 482.

§ 3952. Monthly collection statement

Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner a statement of the collections made by him within the month. 53 Stat. 482.

§ 3953. Monthly account of goods in bond

(a) **Goods stored in bond.** Every collector who has charge of any warehouse in which distilled spirits or articles are stored in bond shall render a monthly account of all such articles to the Commissioner, by whom such account shall be examined and adjusted monthly, so as to exhibit a true statement of the responsibility of such collector thereon. In adjusting such account, the collector shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses.

(b) **Distilled spirits, tobacco, snuff, and cigars shipped in bond.** Every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond, under the provisions of this title, shall render a monthly account of the same to the Commissioner, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amount originally reported as shipped.

(c) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents in respect to distilled spirits, see section 3170.
53 Stat. 483.

§ 3954. Other accounts

For provisions relating to—

Accounts in general—Monthly rendition, see R.S. 3622 as amended by Act of July 31, 1894, c. 174, § 12, 28 Stat. 209 and June 10, 1921, c. 18, § 304, 42 Stat. 24 (U.S.C., Title 31, § 496); period for transmission to Washington, see Act of July 31, 1894, c. 174, § 12, 28 Stat. 209 as amended by Act of March 2, 1895, c. 177, § 4, 28 Stat. 807 and June 10, 1921, c. 18, § 304, 42 Stat. 24 (U.S.C., Title 31, § 78); entry of each receipt and payment, see R.S. 3943 (U.S.C., Title 31, § 525); allocation to appropriation, see R.S. 3623 (U.S.C., Title 31, § 498); delinquency in rendition, see section 3975.
Account of taxes and penalties assessed, see section 3641.

53 Stat. 483.

§ 3955. Reports concerning misconduct of officers and agents

It shall be the duty of every collector to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. 53 Stat. 483.

SUBCHAPTER C.—POWERS AND DUTIES**§ 3960. Superintendence of exports and drawbacks**

In any port of the United States where there is more than one collector of internal revenue, the Secretary may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under internal revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officer last named shall be prescribed by the Secretary. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal revenue law, shall be delivered to the collector in charge of exportation. 53 Stat. 483.

§ 3961. Collection

For provisions relating to—

Authority to collect—Taxes generally, see section 3651(a) (1); taxes certified by Commissioner, see section 3641; taxes certified by another collector, see section 3651(b).

Enforcement of law and regulations, see section 3654(a).

Distrain, see subchapter C of chapter 36.

Seizure and forfeiture, see subchapter D of chapter 36.

Responsibility for acts or omissions of deputy collectors, see section 3654(b).

53 Stat. 484.

§ 3962. Completion of collections

(a) **Accounts generally.** Every collector shall complete the collection of all sums assigned to him for collection and shall pay over the same into the Treasury.

(b) **Predecessor collector's accounts.** In case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same. 53 Stat. 484.

§ 3963. Stamp supply

For provisions relating to—

Tobacco and snuff, see section 2103.

Cigars and cigarettes, see section 2112(c).

Playing cards, see section 1832.

53 Stat. 484.

§ 3964. Information and returns

For provisions relating to—

Convass¹ of districts for taxable persons and objects, see section 3600.

Entry of premises for examination of taxable objects, see section 3601(a).

Preparation and execution of lists or returns for taxpayer, see sections 3611(a) (2), 3612, and 3613.

Notice requiring list or return, see section 3611(c).

Extension of time for filing miscellaneous tax returns, see section 3634.

53 Stat. 484.

¹ So in original. Probably should read "convass."

§ 3965. Administration of oaths and taking of testimony

(a) In general

See section 3632.

(b) Oaths to expense accounts. Collectors are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered no charge shall be made; and no fee or money paid for the services herein described shall be paid or reimbursed by the United States. 53 Stat. 484.

§ 3966. Tobacco, snuff, cigars, and cigarettes

For provisions relating to—

Approval of bonds—Tobacco and snuff manufacturers, see section 2013; cigar and cigarette manufacturers, see section 2033; leaf tobacco dealers, see section 2053; peddlers, see section 2073.

Issuance of certificates—Tobacco and snuff manufacturers, see section 2014; leaf tobacco dealers, see section 2054; peddlers, see section 2074.

Assignment of factory or trade number—Tobacco and snuff manufacturers, see section 2016; cigar and cigarette manufacturers, see section 2033; leaf tobacco dealers, see section 2054.

Examination of inventory—Tobacco and snuff manufacturers, see section 2017; cigar and cigarette manufacturers, see section 2036.

Examination of sales statements of dealers, see section 2058.

53 Stat. 484.

§ 3967. Prohibition upon discharge of another collector's duties

No collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector. 53 Stat. 484.

SUBCHAPTER D.—COVERING OF COLLECTIONS INTO THE
TREASURY

§ 3970. Depositories for collections

The Secretary is authorized to designate one or more depositories in each State, for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department. 53 Stat. 485.

§ 3971. Deposit of collections

(a) General rule. Except as provided in subsection (b), the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, designated depository, or proper officer of a deposit bank, shall be transmitted to the Commissioner.

(b) Exceptions

(1) Sums offered in compromise. Sums offered in compromise under the provisions of section 3761;

(2) Sums offered for purchase of real estate. Sums offered for the purchase of real estate under the provisions of section 3795; and

(S) **Surplus proceeds in distraint sales.** Surplus proceeds in any distraint sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the distraint and sale—shall be deposited with the Treasurer of the United States in a special deposit account in the name of the collector making the deposit. Upon acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn by the collector from his special deposit account with the Treasurer of the United States and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Commissioner shall authorize the collector, through whom the amount of such offer was submitted, to refund to the maker of such offer the amount thereof. In the case of surplus proceeds from distraint sales the Commissioner shall, upon application and satisfactory proof in support thereof, authorize the collector through whom the amount was received to refund the same to the person or persons legally entitled thereto. 53 Stat. 485.

SUBCHAPTER E.—DISTRRAINT AGAINST DELINQUENT COLLECTOR

§ 3975. Warrant of distress

When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the General Accounting Office shall, immediately after evidence of such delinquency, report the same to the General Counsel for the Treasury Department, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. 53 Stat. 485.

§ 3976. Sale of personal property

(a) **Authorization and procedure.** The said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sum which may remain due, with 5 per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the State wherein such collector resides.

(b) **Bill of sale.** The bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. 53 Stat. 486.

§ 3977. Sale of real property

(a) **Authorization and procedure.** For want of goods and chattels, or other personal effects of such collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection district, and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy.

(b) **Deed of conveyance.** Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance there-

of, to be executed and acknowledged in the manner and form prescribed by the laws of the State in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. 53 Stat. 486.

§ 3978. Disposition of proceeds of sale

All moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid. 53 Stat. 486.

CHAPTER 42.—DEPUTY COLLECTORS OF INTERNAL REVENUE

Sec.

3990. Number, appointment, and compensation.

3991. Revocation of appointment.

3992. Bonds.

3993. Collection authority.

3994. Detail to other collection districts.

3995. Deputy as acting collector.

3996. Retention of deputies pending appointment of successor collector.

3997. Administration of oaths.

§ 3990. Number, appointment, and compensation

Each collector shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary, upon the recommendation of the Commissioner: *Provided*, That the Secretary, on the recommendation of the Commissioner, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal revenue taxes collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year elapsed since the close of the fiscal year in which the services were rendered. 53 Stat. 487.

§ 3991. Revocation of appointment

Each collector shall have power to revoke the appointment of any deputy, giving such notice thereof as the Commissioner may prescribe. 53 Stat. 487.

§ 3992. Bonds

Each collector shall have power to require and accept bonds or other securities from any deputy; and actions upon such bonds may be brought in any appropriate district court of the United States; which courts shall have jurisdiction of such actions concurrently with the courts of the several States. 53 Stat. 487.

§ 3993. Collection authority

For authority of deputy collector to collect the taxes levied or assessed within the portion of the district assigned to him, see section 3654(b).
53 Stat. 487.

§ 3994. Detail to other collection districts

(a) *Authorization.* The Commissioner is authorized to detail deputy collectors in one district for special duty in other districts.

(b) **Payment of compensation.** The deputy collectors so detailed shall be paid with respect to the district for which they are appointed and for which the allowance for their salary and expenses is made, the same as if all their services had been performed and expenses incurred in that district. 53 Stat. 487.

§ 3995. Deputy as acting collector

(a) **Sickness, absence, or temporary disability of collector.** In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies; and for the official acts or defaults of such deputies the collector and his sureties shall be held responsible to the United States.

(b) **Vacancy in the office of collector.** In case of a vacancy occurring in the office of collector, and until a successor is appointed, the deputy of such collector senior in service shall discharge all the duties of collector; and of two or more deputies appointed on the same day, the one residing nearest the residence of the collector when the vacancy occurred shall discharge the said duties until another collector is appointed. When it appears to the Secretary that the interest of the Government so requires, he may, by his order, direct the said duties to be performed by such other one of the said deputies as he may designate.

(c) **Liability on bonds**

(1) **Collector's bonds.** For the official acts and defaults of the deputy upon whom said duties are devolved, remedy shall be had on the official bond of the collector, as in other cases.

(2) **Deputy collector's bond.** Any bond or security taken from a deputy by a collector, pursuant to section 3992 of this chapter, shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act or omission of duty by the deputy so continuing or succeeding to the duties of such collector.

(d) **Salary in case of vacancy in collector's office.** Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and office expenses allowed by the Secretary to such collector. And such deputy shall not be debarred from receiving such salary and office expenses by reason of the holding of another Federal office by said collector during the time for which such deputy acts as collector. But all payments to such deputy collector shall be upon duly audited vouchers. 53 Stat. 487.

§ 3996. Retention of deputies pending appointment of successor collector

In the case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed. 53 Stat. 488.

§ 3997. Administration of oaths

For authority of deputy collectors to administer oaths, see section 3632. 53 Stat. 488.

CHAPTER 43.—INTERNAL REVENUE AGENTS

Sec.

4000. Appointment.

4001. Assignment to duty.

4002. Post of duty.

4003. Powers and duties.

§ 4000. Appointment

The Commissioner may, whenever in his judgment the necessities of the service so require, employ competent agents, who shall be known and designated as internal revenue agents, and, except as provided for in this title, no general or special agent or inspector of the Treasury Department in connection with internal revenue, by whatever designation he may be known, shall be appointed, commissioned, or employed. 53 Stat. 489.

§ 4001. Assignment to duty

The Commissioner may, at his discretion, assign any agent whose employment is authorized by the preceding section to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary. 53 Stat. 489.

§ 4002. Post of duty

(a) In general

For authority of Commissioner to determine and designate the posts of duty of employees of the internal revenue service engaged in field work or traveling, see section 4040.

(b) Duty in Washington

For authority of Commissioner to assign internal-revenue agents to duty in Washington, see section 3901(b).

53 Stat. 489.

§ 4003. Powers and duties

(a) Entry of premises for examination of taxable objects. The agents whose employment is authorized by this chapter shall have all the powers of entry and examination conferred upon any officer of internal revenue by section 3601 and sections 2828, 2839, and 2857, and all the provisions of said sections, including those imposing fines, forfeitures, penalties, or other punishments for the enforcement thereof, shall be applicable to the action of internal-revenue agents, in the same manner as if such agents were specially named in each of said sections.

(b) Report of delinquency or malfeasance of officers or agents. It shall be the duty of every internal revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same.

(c) Enforcement of law and regulations

For provisions requiring internal-revenue agents to see that all laws and regulations relating to the collection of internal-revenue taxes are complied with, see section 3654(c).

(d) Administration of oaths

For authority of internal-revenue agents to administer oaths, see section 3632(a) (1).

(e) Inspection of certificate of peddler of tobacco

For authority of internal-revenue agents to demand production of and inspect the collector's certificate for peddlers of tobacco, see section 2192.

53 Stat. 489.

CHAPTER 44.—STOREKEEPER-GAUGERS

Sec.

- 4010. Appointment and bond.
- 4011. Compensation.
- 4012. Post of duty.
- 4013. Assignment.
- 4014. Transfer.
- 4015. Detail to other districts.
- 4016. Suspension.
- 4017. Daily gauging return.
- 4018. Engagement in other business.
- 4019. Leave of absence.
- 4020. Temporary charge of warehouses.
- 4021. Penalties.
- 4022. Rules and regulations.

§ 4010. Appointment and bond

(a) **Requirement.** There shall be appointed by the Secretary such number of storekeeper-gaugers as may be necessary, who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner, for the faithful discharge of the duties assigned to him by law or regulations; and the penal sum of said bond shall not be less than \$5,000, and said bond shall be renewed or strengthened as the Commissioner may require.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 491.

§ 4011. Compensation

(a) **Salary.** All storekeeper-gaugers shall be full-time employees, paid upon a per annum basis. No person who was employed as a storekeeper-gauger on April 1, 1929, shall be paid at a rate less than the rate upon which his per diem compensation was based at such time; and no person entering upon such employment after such time shall be paid at a rate less than the minimum rate upon which per diem compensation of storekeeper-gaugers was based on April 1, 1929.

(b) **Traveling expenses.** Storekeeper-gaugers, when traveling to or from assignments, or when transferred from one assignment to another, either in the same district or in different districts, shall receive actual and necessary traveling expenses.

(c) Subsistence

For subsistence allowed, see section 4012. 53 Stat. 491.

§ 4012. Post of duty

(a) **Principal station.** The Commissioner shall designate for each storekeeper-gauger a principal station, which shall be held to be the designated post of duty of such employee for the purposes of the Travel Expense Act of 1949, and which shall, wherever practicable, be at or near the place of bona fide residence of such employee. Such principal station may be changed from time to time by the Commissioner as circumstances may require. A storekeeper-gauger, when on detail in emergency cases or assignments in the administrative district wherein he is regularly commissioned, shall be allowed subsistence, as well as when detailed for special duty in any other or outside district.

§ 4012

PERSONNEL

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, see section 3170. 53 Stat. 491, amended June 9, 1949, c. 185, § 9, 63 Stat. 9.

Historical Note

References in Text. The Travel Expense Act of 1949, referred to in subsec. (a), is classified to sections 835-842 of Title 5, Executive Departments and Government Officers and Employees.

1949 Amendment. Subsec. (a) amended by Act June 9, 1949, which substituted the Travel Expense Act of 1949 in lieu of the Subsistence Expense Act of 1926, c. 457, 44 Stat. 688 (U.S.C.A. Title 5, c. 16) as amended.

§ 4013. Assignment

(a) **To bonded warehouses.** One or more storekeeper-gaugers shall be assigned by the Commissioner to every internal revenue bonded warehouse established by law.

(b) To fruit distilleries and wineries

For authority to assign a storekeeper-gauger to a fruit distillery or winery, see section 3042.

(c) **To special duty.** Storekeeper-gaugers, when not employed upon their regular duties, may be assigned to such duties as the Commissioner shall designate.

(d) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170. 53 Stat. 492.

§ 4014. Transfer

(a) **Authorization.** The Commissioner may transfer any storekeeper-gauger from one distillery, warehouse, or other place of duty, or from one collection district to another.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170. 53 Stat. 492.

§ 4015. Detail to other districts

(a) **Authorization.** The Commissioner is authorized to detail storekeeper-gaugers appointed in one district for special or regular duty in other districts.

(b) **Accounts.** The accounts of storekeeper-gaugers so detailed shall be adjusted and paid in the district where they are appointed the same as if assigned to regular duty, without regard to the number of districts in which they may have been employed in any one month, the same as if all their services had been performed and expenses incurred in the district in which appointed, and the order of the Commissioner transferring storekeeper-gaugers to special work shall be accepted by the General Accounting Office as full authority for proper expenses incurred by said storekeeper-gaugers while so assigned.

(c) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170. 53 Stat. 492.

§ 4016. Suspension

(a) **Authorization.** The Commissioner may, by notice in writing, suspend from duty any storekeeper-gauger.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.
53 Stat. 492.

§ 4017. Daily gauging return

(a) Requirement. Every storekeeper-gauger shall, under such regulations as may be prescribed by the Commissioner, make a daily return to the collector of his district giving a true account in detail of all articles gauged and proved or inspected by him, and for whom, and the number and kind of stamps used by him.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.
53 Stat. 492.

§ 4018. Engagement in other business

No storekeeper-gauger shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner. 53 Stat. 493.

§ 4019. Leave of absence

The general provisions of law relating to annual leave of absence and sick leave of employees in the executive departments shall apply to storekeeper-gaugers. 53 Stat. 493.

§ 4020. Temporary charge of warehouses

(a) Authorization. In case of the absence by reason of sickness or other cause of any storekeeper-gauger assigned to an internal revenue bonded warehouse under subsection (a) of section 4013, the collector having control of the warehouse may designate a person to have temporary charge thereof, who shall, during such absence, perform the duties and receive the pay of the storekeeper-gauger for the time he may be so employed, and shall for any violation of the law be subject to the same punishment as storekeeper-gaugers.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.
53 Stat. 493.

§ 4021. Penalties

(a) Delegation of duties. Whenever any storekeeper-gauger employs any owner, agent, or superintendent of any distillery or internal revenue bonded warehouse, or any person in the service of such owner, agent, or superintendent, or any rectifier or wholesale liquor dealer, or any person in the service of such rectifier or wholesale liquor dealer, to use his brands or to discharge any of the duties imposed upon him by law, he shall, for each offense so committed, be subject to a fine of not more than \$1,000. This subsection shall not apply in any case in which the use of the storekeeper-gauger's brand or the discharge of his duties by another has been directed by the Commissioner with the approval of the Secretary under authority of law.

(b) Fraudulent inspection, gauging, or proof. Every storekeeper-gauger who makes any false or fraudulent inspection, gauging, or proof, shall pay a penalty of \$1,000, and be fined not less than \$500 nor more than \$5,000, and imprisoned not less than three months nor more than three years.

§ 4021

PERSONNEL

(c) Unlawful removal of distilled spirits from bonded warehouse

For penalty imposed for unlawfully removing or permitting to be removed distilled spirits from a bonded warehouse, see section 2913.
53 Stat. 493.

§ 4022. Rules and regulations

The Commissioner, with the approval of the Secretary, may prescribe such rules and regulations as may be necessary or proper to carry out the provisions of sections 4011, 4012, 4013(c), and 4019. 53 Stat. 493.

CHAPTER 45.—INTERNAL REVENUE INSPECTORS

Sec.

4030. Limitation on appointment.

4031. Transfer.

4032. Suspension.

4033. Entry of premises for examination of taxable objects.

§ 4030. Limitation on appointment

For limitation on appointment of inspectors, see section 4000.
53 Stat. 494.

§ 4031. Transfer

(a) Authorization. The Commissioner may transfer any inspector from one distillery or other place of duty, or from one collection district, to another.

(b) Transfer of powers and duties

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.
53 Stat. 494.

§ 4032. Suspension

The Commissioner may, by notice in writing, suspend from duty any inspector. 53 Stat. 494.

§ 4033. Entry of premises for examination of taxable objects

For authority of inspectors to enter premises for the examination of taxable objects, see section 3001.
53 Stat. 494.

CHAPTER 46.—MISCELLANEOUS PROVISIONS

Sec.

4040. Posts of duty of employees in field service or traveling.

4041. Issue of instructions, regulations, and forms.

4042. Suits for damages by internal revenue officers or agents.

4043. Actions against revenue officers.

4044. Administration of oaths and taking of testimony.

4045. Special authorizations to make seizures.

4046. Statement of fees, charges, and allowances.

4047. Penalties.

4048. Extended application of penalties relating to internal revenue officers.

§ 4040. Posts of duty of employees in field service or traveling

The Commissioner shall determine and designate the posts of duty of all employees of the internal revenue service engaged in field work or

traveling on official business outside of the District of Columbia. 53 Stat. 495.

§ 4041. Issue of instructions, regulations, and forms

(a) In general. The Secretary shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws; and he shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law.

(b) Receipt of United States securities

For authority of the Secretary to issue instructions and regulations governing the receipt by collectors and others of United States securities, see R.S. 251 (U.S.C., Title 31, § 427).

53 Stat. 495.

§ 4042. Suits for damages by internal revenue officers or agents

If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, in the discharge of his duty, under any law of the United States for the collection of taxes, he shall be entitled to maintain suit for damage therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found. The provisions of this section shall apply to internal revenue agents as fully as to internal revenue officers. 53 Stat. 495.

§ 4043. Actions against revenue officers

For authority of revenue officers to have civil suits or criminal prosecutions commenced against them in a State court transferred to a district court, see section 33 of the Judicial Code as amended by the Act of Aug. 23, 1916, c. 399, 39 Stat. 532.

53 Stat. 495.

Historical Note

References in Text. Section 33 of the Judicial Code as amended by the Act of Aug. 23, 1916, c. 399, 39 Stat. 532, referred to in the text, was repealed by	Act June 25, 1948, c. 646, § 39, 62 Stat. 902, and is now covered by sections 1442, 1446 and 1447 of Title 28, Judiciary and Judicial Procedure.
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§ 4044. Administration of oaths and taking of testimony

For authority of collectors, deputy collectors, internal revenue officers, and internal revenue agents to administer oaths and take testimony, see section 3632.

53 Stat. 495.

§ 4045. Special authorizations to make seizures

For special authorization by the Commissioner to internal revenue officers to make seizures, see section 3720(b).

53 Stat. 495.

§ 4046. Statement of fees, charges, and allowances

Every internal revenue officer, whose payment, charges, salary, or compensation are composed, wholly or in part, of fees, commissions, allowances, or rewards, from whatever source derived, shall be required to render to the Commissioner, under regulations to be approved by the Secretary, a statement under oath setting forth the entire amount of such fees, commissions, emoluments, or rewards of whatever nature, or from whatever source received, during the time for which said statement is rendered; and any false statement knowingly and willfully rendered under the requirements of this section, or regulations established in accordance therewith, shall be deemed willful perjury and punished in the manner provided by law for the crime of perjury. And any neglect or omission

to render such statement when required shall be punished by a fine of not less than \$200, nor more than \$500, in the discretion of the court. 53 Stat. 496.

§ 4047. Penalties

(a) **Disclosure of information by officers and employees of the United States**

(1) **Operations of manufacturer or producer.** It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and the offender shall be dismissed from office or discharged from employment. The provisions of this paragraph shall apply to internal revenue agents as fully as to internal revenue officers.

(2) **Income tax data**

For penalty for disclosing income tax data, see section 55(f) (1).

(b) **Interest of internal revenue officer or agent in tobacco or liquor production.** Any internal revenue officer or internal revenue agent interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer or agent so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than \$500 nor more than \$5,000.

(c) **Issue of stamps by collector before payment.** Any collector, or any deputy collector or other employee of, or person acting for such collector, who shall issue any stamp or stamps indicating the payment of any internal-revenue tax before payment in full therefor has been made to the officer or person issuing the same, shall be deemed guilty of a misdemeanor and shall be fined for each stamp thus issued an amount equal to the face value thereof, in addition to the liability of the collector on his official bond on account of such stamp; and such collector, deputy collector, or employee shall be dismissed from office.

(d) **Demand or acceptance of bribes by United States attorneys or marshals.** Every United States attorney or marshal who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other property of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of any provision of the internal revenue laws, except as expressly authorized by law to do so, shall be held to be guilty of a misdemeanor, and shall be fined in double the sum or value of the money or property received or demanded, and be imprisoned for not less than one nor more than ten years.

(e) **Other unlawful acts of revenue officers or agents.** Every officer or agent appointed and acting under the authority of any revenue law of the United States—

(1) Who is guilty of any extortion or willful oppression under color of law; or

(2) Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) Who willfully neglects to perform any of the duties enjoined on him by law; or

(4) Who conspires or colludes with any other person to defraud the United States; or

(5) Who makes opportunity for any person to defraud the United States; or

(6) Who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) Who negligently or designedly permits any violation of the law by any other person; or

(8) Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or

(9) Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, falls to report, in writing, such knowledge or information to his next superior officer and to the Commissioner; or

(10) Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do—

shall be dismissed from office, shall be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court. The provisions of this subsection shall apply to internal revenue agents as fully as to internal revenue officers.

(f) Cross references

For penalties relating to statements of fees, charges, and allowances, see section 4046.

For penalty imposed for collecting special tax from persons rectifying on prohibited premises, see section 3250(f) (2).

53 Stat. 496, amended June 25, 1948, c. 646, § 1, 62 Stat. 909.

Historical Note

Change of Name. Subsec. (d) catch-line and text amended by Act June 25, 1949, which substituted "United States	attorney" in lieu of "district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.
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§ 4048. Extended application of penalties relating to internal revenue officers

All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any bureau thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money. 53 Stat. 497.

SUBTITLE F.—THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Chap.	Sec.
47. Organization and Membership of the Joint Committee	5000
48. Powers and Duties of the Joint Committee	5010

CHAPTER 47.—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE

Sec.
5000. Authorization.
5001. Membership.
5002. Election of chairman and vice-chairman.
5003. Appointment and compensation of staff.
5004. Payment of expenses.

§ 5000. Authorization

There shall be a joint congressional committee known as the Joint Committee on Internal Revenue Taxation (hereinafter in this subtitle referred to as the "Joint Committee"). 53 Stat. 501.

§ 5001. Membership

(a) **Number and selection.** The Joint Committee shall be composed of ten members as follows:

(1) **From Committee on Finance.** Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee; and

(2) **From Committee on Ways and Means.** Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

(b) Tenure of office

(1) **General limitation.** No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that—

(2) **Exception.** The members chosen by the Committee on Ways and Means who have been reelected to the House of Representatives may continue to serve as members of the Joint Committee notwithstanding the expiration of the Congress.

(c) Vacancies. A vacancy in the Joint Committee—

(1) **Effect.** Shall not affect the power of the remaining members to execute the functions of the Joint Committee; and

(2) **Manner of filling.** Shall be filled in the same manner as the original selection, except that—

(A) **Adjournment or recess of Congress.** In case of a vacancy during an adjournment or recess of Congress for a period of more than two weeks, the members of the Joint Committee who are members of the Committee entitled to fill such vacancy may designate a member of such Committee to serve until his successor is chosen by such Committee; and

(B) **Expiration of Congress.** In the case of a vacancy after the expiration of a Congress which would be filled by the Committee on Ways and Means, the members of such Committee who are continuing to serve as members of the Joint Committee may designate a person who, immediately

prior to such expiration, was a member of such Committee and who is re-elected to the House of Representatives, to serve until his successor is chosen by such Committee.

(d) Allowances. The members shall serve without compensation in addition to that received for their services as members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session. 53 Stat. 501.

§ 5002. Election of chairman and vice-chairman

The Joint Committee shall elect a chairman and vice-chairman from among its members. 53 Stat. 502.

§ 5003. Appointment and compensation of staff

The Joint Committee shall have power to appoint and fix the compensation of a clerk and such experts and clerical, stenographic, and other assistants as it deems advisable. 53 Stat. 502.

§ 5004. Payment of expenses

The expenses of the Joint Committee shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers signed by the chairman or the vice-chairman. 53 Stat. 502.

CHAPTER 48.—POWERS AND DUTIES OF THE JOINT COMMITTEE

Sec.

5010. Powers.

5011. Duties.

5012. Additional powers to obtain data.

§ 5010. Powers

(a) To obtain data and inspect income returns

For powers of the Joint Committee to obtain and inspect income returns, see section 55(d).

(b) Relating to hearings and sessions. The Joint Committee, or any subcommittee thereof, is authorized—

(1) To hold. To hold hearings and to sit and act at such places and times;

(2) To require attendance of witnesses and production of books. To require by subpoena (to be issued under the signature of the chairman or vice-chairman) or otherwise, the attendance of such witnesses and the production of such books, papers, and documents;

(3) To administer oaths. To administer such oaths; and

(4) To take testimony. To take such testimony; as it deems advisable.

(c) To procure printing and binding. The Joint Committee, or any subcommittee thereof, is authorized to have such printing and binding done as it deems advisable.

(d) To make expenditures

(1) General authority. The Joint Committee, or any subcommittee thereof, is authorized to make such expenditures as it deems advisable.

§ 5010 POWERS, ETC., JOINT COMMITTEE

(2) **Limitation.** The cost of stenographic services in reporting such hearings as the Joint Committee may hold shall not be in excess of 25 cents per hundred words. 53 Stat. 503.

§ 5011. Duties

It shall be the duty of the Joint Committee—

(a) Investigation

(1) **Operation and effects of law.** To investigate the operation and effects of the Federal system of internal revenue taxes;

(2) **Administration.** To investigate the administration of such taxes by the Bureau of Internal Revenue or any executive department, establishment, or agency, charged with their administration; and

(3) **Other investigations.** To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary.

(b) Simplification of law

(1) **Investigation of methods.** To investigate measures and methods for the simplification of such taxes, particularly the income tax; and

(2) **Publication of proposals.** To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes.

(c) **Reports.** To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

(d) Cross reference

For duties of the Joint Committee relating to refunds of income and estate taxes, see section 3777.

53 Stat. 503.

§ 5012. Additional powers to obtain data

(a) The Joint Committee on Internal Revenue Taxation or the Chief of Staff of such Joint Committee, upon approval of the Chairman or Vice-Chairman, is authorized to secure directly from the Bureau of Internal Revenue (including the Assistant General Counsel for the Bureau of Internal Revenue), or directly from any executive department, board, bureau, agency, independent establishment or instrumentality of the Government, information, suggestions, data, estimates and statistics, for the purpose of making investigations, reports and studies relating to internal revenue taxation.

(b) The Bureau of Internal Revenue (including the Assistant General Counsel for the Bureau of Internal Revenue), executive departments, boards, bureaus, agencies, independent establishments and instrumentalities are authorized and directed to furnish such information, suggestions, data, estimates and statistics directly to the Joint Committee on Internal Revenue Taxation or to the Chief of Staff of such Joint Committee, upon request made pursuant to this section.

(c) Subsections (a) and (b) shall be applied in accordance with their provisions without regard to Reorganization Plan Numbered 26 of 1950 or to any other reorganization plan becoming effective on, before, or after the date of the enactment of this subsection. Added Oct. 21, 1942, 4:30 p. m., E. W. T., c. 619, Title V, § 512, 56 Stat. 970, amended Feb. 28, 1951, c. 2, 65 Stat. 3.

Historical Note

References in Text. Reorganization Plan No. 26 of 1950, referred to in subsec. (c), is set out as a note preceding section 1 of this title.

Date of enactment of subsec. (c), referred to in subsec. (c), was Feb. 28, 1951.

1951 Amendment. Subsec. (c) added by Act Feb. 28, 1951.

Text of Amendatory Revenue Acts. Complete original text of Revenue Acts amending this section, 1939 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History: For legislative history and purpose of Act Feb. 28, 1951, see 1951 U.S.Code Cong.Service, p. 1334.

END OF VOLUME

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